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CANADA

THE GATT AGREEMENT ON CUSTOMS VALUATION

PART I

PROPOSED AMENDMENTS TO THE CUSTOMS ACT



REFERENCE

159

A REPORT BY
THE TARIFF BOARD

CAI
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REFERENCE No. 159

A REPORT OF AN INQUIRY

by the

TARIFF BOARD

respecting

THE GATT AGREEMENT ON CUSTOMS VALUATION

PART I

PROPOSED AMENDMENTS TO THE CUSTOMS ACT

This report, made pursuant to a reference by the Minister of Finance and signed by the Board on March 27, 1981, is presented for tabling in Parliament under the provisions of section 6 of the Tariff Board Act.

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CHAPTER I. INTRODUCTION

Terms of Reference

This volume contains the first part of a report by the Tariff Board under Reference No. 159 on the subject of customs valuation. The terms of reference for this study are set out in a letter, dated August 29, 1980, from the Minister of State (Finance), to the Chairman of the Tariff Board. The Minister's letter, made public under cover of a press release, is worded as follows:

Dear Mr. MacDonald:

Canada agreed, in the context of the Multilateral Trade Negotiations in Geneva, to adopt the new international agreement on customs valuation, copy attached,⁽¹⁾ provided certain conditions were met. A copy of the Canadian Reservation to the agreement, which was signed December 17, is also attached.⁽²⁾

I believe it would be appropriate for the Tariff Board to review certain matters relating to implementation of the customs valuation agreement by Canada. I therefore direct the Tariff Board to make a study and report, under Section 4 of the Tariff Board Act, on:

- (1) whether the attached draft legislation⁽³⁾ would provide a suitable basis for valuing Canadian imports in accordance with the agreement;
- (2) the impact that implementation of such legislation would have on tariff protection.

I think it is important that there be public hearings on the draft legislation in advance of the Board's study and hearings on the possible impact of such a new valuation system on tariff protection. In the first part of its study the Board should

examine the extent to which the draft legislation fully protects the rights, and gives effect to the obligations, that Canada would have as a signatory to the agreement. In this connection, I would ask the Board to take into account the way in which Canada's major trading partners intend to implement their rights and obligations under the agreement.

I would also like the Board's views on whether the valuation rules are set out in the draft legislation in sufficient clarity to enable importers and exporters to estimate, with reasonable accuracy, the value for duty of their goods in advance of importation, and whether the draft legislation would provide an adequate basis for appeals to the Tariff Board in cases where there may be disputes as to the proper valuation.⁽⁴⁾

The Board's report on the first part of the reference together with any recommendations for revisions to the draft legislation should be submitted to me by April 1, 1981. I would expect to be in a position to give the Board an indication as to the government's position on any changes recommended in the draft legislation within three months of their receipt.

The primary objective of the second phase of the Board's study is to provide advice on what, if any, tariff adjustments would be required to maintain the same level of tariff protection or to ensure that duties collected would not decline significantly if the new valuation system were adopted. The level of duties collected should be calculated on the basis of concessions negotiated in the Tokyo Round,⁽⁵⁾ or where there were no such concessions, the applied tariff rates. I would expect to receive detailed recommendations in this regard either on an item-by-item basis or whatever other basis seems appropriate. In

conducting this study the Board should only examine the valuation system as it existed and was being applied at the beginning of April 1979, when Canada announced it would adopt the agreement on customs valuation if certain conditions were met. I would leave it up to the Board to decide what evidence is relevant in this regard.

In cases where the value for duty is now established by Ministerial prescription under Section 39 of the Customs Act (for example used goods, job lots, discontinued lines and other-than-prime quality goods)⁽⁶⁾ I would direct the Board to consider whether or not a tariff rate adjustment would be the most appropriate or feasible means of providing the protection now accorded in these cases by virtue of the Ministerial prescriptions. In this connection, I would ask the Board to consider whether some of the problems which the current valuation system seeks to address might better be dealt with under other instruments of import policy, including those discussed in the recently published discussion paper on Import Policy.⁽⁷⁾

I would ask that the Board report on the second part of the reference by July 1, 1983 to allow the government time to reach decisions on these matters and discuss them with our trading partners prior to January 1, 1985.

Yours sincerely,

Pierre Bussi res.

Scope, Timing and Method of Inquiry

The Minister's request to the Board with respect to Phase I of the inquiry, as set forth in the third and fourth paragraphs of the letter of reference, is quite explicit. The Board is asked to examine the draft legislation in the light of Canada's rights and obligations

under the agreed code, and, in so doing, to take into account the relevant actions of Canada's principal trading partners. The Board is further asked to assess first, whether the rules intended to be applied to customs valuation are set out in the draft legislation in sufficient clarity as to enable importers and exporters to estimate "with reasonable accuracy" the value for duty of their goods in advance of importation, and secondly, whether the proposed legislative provisions would provide an adequate basis for appeals to the Tariff Board on matters pertaining to customs valuation.

It is to be noted that the Minister has requested the Board to make a study and report on whether the draft legislation would provide a suitable basis for valuing Canadian imports "in accordance with the [international] agreement". Thus, the Board has not been asked to advise for or against the adoption of the GATT Code, to which Canada is committed subject to the qualifications expressed in the Canadian note of reservation. Neither has the Board been asked to carry out an in-depth appraisal of the perceived strengths and weaknesses of the proposed system of valuation other than in the context of Phase II of the inquiry; nor has it been requested to make comparisons between this and the existing system of customs valuation except to the extent that such comparisons are relevant to the task given to the Board in Phase II. Consequently, in view of the stringent time limits imposed, the Board has not sought to deal specifically with any of these matters except in so far as they appear to bear directly upon the issues under consideration or an appreciation thereof has seemed necessary to an understanding of the positions adopted by interested parties.

It has been generally recognized by participants in the public hearings that by accepting the GATT Valuation Agreement, Canada will lose the right to determine the dutiable value of imported goods through the use of ministerial prescriptions⁽⁸⁾. Article 7, paragraph 2 (g) of the Agreement states that no customs value shall be determined on the basis of arbitrary or fictitious values. Ministerial prescriptions are "arbitrary" in the sense that they are not subject to appeal to the Tariff Board or the Federal Court. The manner of their application, however, is appealable. In his letter of reference the Minister implies that the problem of how best to offset the loss of prescriptions currently imposed under the authority of section 39 of the Customs Act, is to be addressed by the Board in Phase II of the inquiry. In the submissions and at the public hearings several parties urged the Board to address this question in the framework of the proposed legislation in its Phase I report. This has not been possible in view of the complexity of problems and the wide variety of products covered by the prescriptions, and the limited time available for the completion of Phase I.

The Board fully appreciates the concerns expressed by certain participants respecting the impending loss of the prescriptions but is of the opinion that the sense of urgency in seeking solutions in Phase I may be based on a misconceived impression that the proposed amendments will be submitted for Parliamentary approval prior to the conclusion of Phase II. The Department of Finance has assured the Board that this is not the intention. On March 6, 1981, the Minister of State (Finance) communicated the following information to the Board:

On January 19, 1981, the research staff of the Board issued an analytical report on Phase I of the above reference. My officials have brought to my attention the comments in that report regarding the timetable for Parliamentary consideration of the draft legislation.

I wish to confirm that I do not intend to table customs valuation legislation in Parliament until after the Board has issued its report on Phase II of the Reference which will deal with the impact the implementation of the legislation would have on the Canadian level of tariff protection.

In the light of this timetable the Board does not consider it necessary or appropriate to attempt to deal definitively with an issue as important as ministerial prescriptions in Phase I, either hastily or without providing adequately for representation by interested parties.

Following receipt of the Minister's letter of reference, the Board, in accordance with the law, caused a Notice of Public Hearing (Notice R-202) to be published in the Canada Gazette and, in addition, placed advertisements in a number of leading newspapers scheduling public hearings with respect to Phase I of the inquiry to take place between December 10, 1980 and January 6, 1981 in Ottawa, Halifax and Vancouver.⁽⁹⁾ Interested parties communicating with the Board in response to these advertisements were sent copies of background material supplied by the Department of Finance, comprising: the International Agreement on Customs Valuation; the Canadian Reservation thereto; the Canadian draft amendments to the valuation sections of the Customs Act; and the letter of reference from the Minister to the Chairman of the Tariff Board. Two further background papers - one comparing the provisions of the Canadian draft legislation and the articles of the GATT Agreement, and the other charting the various elements of cost entering into the determination of the value for duty under the alternative procedures laid down in the draft legislation - were compiled by the Board's staff as an aid to understanding and were circulated to all parties on the Board's mailing list prior to the first hearing.

After the completion of the initial round of hearings the Board's staff conducted an analysis and appraisal of all representations and other pertinent evidence. This staff appreciation was circulated to all interested parties and its consideration constituted the principal item on the agenda at a final public hearing in connection with Phase I of Reference No. 159, held in Ottawa on February 9, 1981. This hearing served a useful purpose in that the resulting dialogue between interested parties and staff gave the Board a finer appreciation of problem areas and helped in the resolution of certain complex issues.

Significance of Customs Valuation

The rates of duties in customs tariffs are expressed in terms of specific duties, ad valorem duties or some combination thereof. Where goods are free of duty, or are subject to a specific rate, i.e. a rate based on a number of units of one kind or another and not on value, the value for duty and the method of establishing that value lose much of their importance. In such cases, customs values are significant only for purposes of trade statistics or if a percentage tax is subsequently levied on a value derived in some manner from the value for duty.

Where there is an ad valorem factor in the rate of duty, then the method of establishing the value for duty may be as significant a protective or revenue-producing feature as the rate of duty itself. Any advance in value is accompanied by a commensurate increase in duties. Values are also significant in relation to the imposition of such charges as anti-dumping duties⁽¹⁰⁾ as well as in relation to any subsequent percentage imposts (such as federal sales and excise taxes) levied on values derived from the value for duty or the duty-paid value.

An important factor affecting the value for duty is the place at which this is determined. Under existing Canadian law, the value is established at the point of direct shipment to Canada. Consequently, the value is a f.o.b. value excluding subsequent freight, brokerage and insurance charges. Most countries levy duties on a c.i.f. basis, thus including all charges up to the point of entry. The latter system, by levying duty on freight, compounds the comparative competitive disadvantage which distance tends to impose upon goods originating in far-off areas. This is not so in the case of the Canadian system which, by ignoring the freight element for duty purposes, is neutral in this respect.

Over the years, the governments of various countries have devised many methods of valuing goods for customs purposes ranging from the simple acceptance of invoice values to highly elaborate, and sometimes seemingly highly protective, systems, incorporating such features as the domestic selling price of home-produced goods (e.g. the A.S.P. system

used in the U.S.A.)(11), fixed advances in values (used in Canada in the 1930's, particularly with respect to fresh fruits and vegetables), or reference to minimum values (a device used in Australia). The concepts of valuation of particular concern in the present inquiry, however, are the notion of the "fair market value", as currently embodied in Canada's Customs Act, and the principle of "transaction value", as defined in the new international code.

Customs Valuation in Canada

The general principles of customs valuation used in Canada are set forth in sections 35 to 44 of the Customs Act, which incorporate the three main bases of valuation - the fair market value of the goods at the time and place of export to Canada; authorization for the Minister to prescribe a method of valuation when the fair market value cannot be determined or where, because of the nature of the goods, it is not considered an appropriate method of valuation; finally, an overriding provision that the value shall not be less than the selling price to the Canadian customer exclusive of all charges incurred after goods have left the point of direct shipment. While certain circumstances are covered in considerable detail, others are left to be dealt with under the authority for ministerial prescriptions.

In essence, the fair market value is the price at which like goods are freely traded under comparable conditions and circumstances (level of trade, time, place, etc.) on the domestic market of the country of export. The principle of fair market value was introduced into the customs administration of the Province of Canada prior to Confederation, and was carried forward into the first Customs Act passed by the Dominion Parliament in 1867 (31 Vict.,c.6,s.31). Ministerial prescription under specific circumstances was first authorized in 1888 (51 Vict.,c.14,s.15). The use of the invoice value (i.e. the transaction price) as a minimum value was introduced in 1907 (6-7 Edw.VII.,c.10,s.4).

Although the valuation provisions of the Customs Act have been amended from time to time, such changes have usually been limited to detail or designed to deal with new situations. Certain provisions introduced in the inter-war period (1918-1939) were found to be contrary to GATT and were removed in 1948. In some cases, changes resulted from judicial decisions contrary to departmental practices and interpretations; this was, at least partially the cause of the last major changes, in 1955 and 1958, which spelled out in considerable detail the methods of establishing fair market value after the Department of National Revenue had been overruled on certain cases involving price and freight equalization⁽¹²⁾. An example of new circumstances requiring change was the appearance of state-trading nations, which led to the introduction of valuations based upon third-country comparisons, usually applied by ministerial prescription.

As noted elsewhere⁽¹³⁾, the application of the concept of fair market value and the general approach embodied in the use of ministerial prescriptions are contrary to the provisions of the new GATT Valuation Code.

Administration of Customs Valuation

One facet of the enforcement of Canada's present valuation system is the issue of valuation rulings. In recent years this function has become more centralized within the Department of National Revenue, being largely carried out by Dominion customs appraisers located in Ottawa, with regional officials primarily concerned with requests for reappraisal of value for duty.

Valuation rulings (including ministerial prescriptions) may be of a general policy nature or they may be specific to certain named products from particular countries or firms - e.g. value for duty shall be: "cost of production advanced by 10 per cent" OR "your price list xyz effective December 31, 1980". Rulings of general interest are published in memoranda available to the public, while others are provided on a limited or confidential basis. Copies of rulings which do not contain commercially-sensitive data are supplied to the customs inspectors and commodity specialists responsible for the examination of import documentation and goods at the ports of entry.

When a question as to the appropriate fair market value arises, some inquiries are made before a ruling is issued. In case of doubt or dispute, or where a change in ruling is requested, a more detailed investigation may be carried out by customs officials located in, or despatched to, the country of export. In accordance with sections 36 and 37 of the Customs Act, information will be sought in regard to relevant selling prices and/or costs of production in the exporter's home market. This information will become the basis for the determination of fair market value. In the event that such data are not available, or if the circumstances are otherwise "unusual" (e.g. in the case of discontinued lines or other low-cost imports, or where goods originate in state-controlled economies), the fair market value will normally be prescribed by the Minister under section 39 or 40 of the Customs Act. The value for duty may thereby be substantially raised in relation to the declared selling price, and hence the protective effect of the tariff may be significantly increased. A review of the list of goods encompassed by ministerial prescriptions suggests that some industrial sectors have become heavily dependent upon the use of this device to limit the adverse impact of foreign competition from low-cost suppliers. Thus, at the public hearing in Ottawa on December 10, 1980, it was represented that 80 per cent of apparel imports into Canada are presently covered by ministerial prescriptions on customs valuation, such prescriptions resulting in advances over selling prices from major sources of 15 to 20 per cent⁽¹⁴⁾.

Reappraisal and Appeal Procedures

For many years before 1931, when the Tariff Board, in part of its function, replaced the Board of Customs, the final board of appeal on customs matters, outside the courts, lay within the Customs Department itself. The Board of Customs was empowered to review the decision of any appraiser or collector of customs as to the principal markets of the country, or as to the fair market value of goods for duty purposes. The decision of the Board in these matters, when approved by the Minister of Customs, was "final and conclusive" (51 Vict., c.14, s.5, 16; 4 Edw.VII., c.10, s.4).

The present review and appeal procedures with respect to customs valuation are contained in sections 46 to 50 of the Customs Act,⁽¹⁵⁾ which are not being amended in the present instance. Under these provisions, an appraisal of the value for duty of any goods made at the time of entry is final and conclusive unless, within 90 days of the date of entry, the importer makes a request for reappraisal or unless, within two years of the date of entry, the customs appraiser or the Deputy Minister of National Revenue deems such a reappraisal to be advisable. If, following the review by the Dominion customs appraiser, the importer continues to feel aggrieved, he may, within 90 days of the appraiser's decision, request the Deputy Minister of National Revenue for a further reappraisal of the value of the goods. In turn, the ruling of the Deputy Minister may, within 60 days, be appealed to the Tariff Board. Further, under section 49 of the Customs Act - a provision seldom used⁽¹⁶⁾ - the Deputy Minister may, himself, refer to the Board any question relating to the valuation or tariff classification of goods.

In connection with every appeal the Board is required to hold a hearing in public. Hearings are generally held in the Board's courtroom in Ottawa, and seldom last more than one day. Appellants may appear without counsel and no costs of any kind are assessed by the Board.

Viewed in the light of this comparative ease of access, the relatively small number of appeal cases concerning value for duty to be heard by the Board over the years - 197 between July 1933 and December 1980⁽¹⁷⁾ - may seem suprising. The apparent reluctance of importers to pursue their grievances might suggest that the law in relation to customs valuation in Canada has been clear and unambiguous, or that importers have generally been comfortable with the way in which it has been administered. From a more jaundiced viewpoint, however, it might also be argued that most of the more contentious valuations have fallen under the umbrella of ministerial prescriptions, from which there is no appeal. Be that as it may, the declarations of the Tariff Board are judgments based on findings of fact and are final unless leave to appeal on points of law is granted by the Federal Court. Subsequent appeal to the Supreme Court is also a possibility.

CHAPTER II. THE INTERNATIONAL FRAMEWORK

Background to Valuation Agreement

The new GATT Valuation Code is the latest in a series of GATT Codes designed to harmonize, liberalize and simplify the rules of international trade. The Code constitutes an amplification of Article VII of the GATT (signed in October, 1947), which laid down certain principles regarding customs valuation but made no attempt to standardize valuation procedures. The basic tenet of Article VII provides that customs valuation shall be based on the "actual value" of imported goods. "Actual value" is defined as "the price at which ... such or like merchandise is sold or offered for sale in the ordinary course of trade under fully competitive conditions". Within this general conceptual framework, the specific criteria to be applied in the determination of actual value were initially left to the legislation of the the country of importation, there being general agreement, however, that the appraisal of goods for duty purposes "should not be based on the value of merchandise of national origin or on arbitrary or fictitious values".⁽¹⁾

Further progress towards the standardization of the principles of customs valuation was achieved as a result of studies undertaken in connection with the proposal to establish a European Customs Union, culminating in the Convention on the Valuation of Goods for Customs Purposes, signed in Brussels on December 15th, 1950, and entered into force on 28th July, 1953. This Convention, more generally known as the Brussels Definition of Value (BDV), was subsequently applied by the members of the European Economic Community and a number of other countries levying customs duties on a c.i.f. basis. The central underlying concept of the BDV was that of "notional valuation", whereby goods were to be appraised upon the basis of the price which they would fetch when freely sold at the point of importation, with the seller bearing all costs and charges incidental to the sale and delivery, except duties or taxes chargeable in the country of importation.⁽²⁾

The umbrella of apparent uniformity provided by the Brussels Definition of Value did not prevent the continuing existence of wide differences in the customs valuation practices of member countries; and although the application of the concept of "notional value", within the framework of guidelines provided, may have served to reduce the use of discretionary and discriminatory methods of appraisal, it did not result in the elimination of arbitrary adjustments. The system of "uplifts", most frequently imposed in the case of sales between related parties, was a particularly sore point with foreign exporters, including those from Canada and the United States.

The former United States system of valuation was alike in many respects to the present Canadian system. Imported goods were valued on the basis of the price at which they were "freely offered" for sale in the country of export. The notion of "freely offered price" is very similar to the Canadian concept of "fair market value" and is open to similar objections. The former U.S. valuation system also featured various other, more arbitrary, bases of appraisal. These were the Final List, the American Selling Price (ASP), and the wine gallonage assessment.

The Final List, which may be regarded as the U.S. equivalent of ministerial prescriptions, pertained to a broad range of dutiable imports, including automobile parts, machinery, household appliances, metal products, confectionery, rubber footwear and a variety of textile products. The American Selling Price system, which valued goods on the basis of the (usually high) price of competing domestic products, was more limited in scope, applying primarily to coal-tar derivatives plus a few other specific classes of merchandise.⁽³⁾ In the case of the so-called wine gallonage assessment, U.S. distillers were protected by a differential basis of valuation directed against imports of bottled spirits, as against bulk imports of liquor.

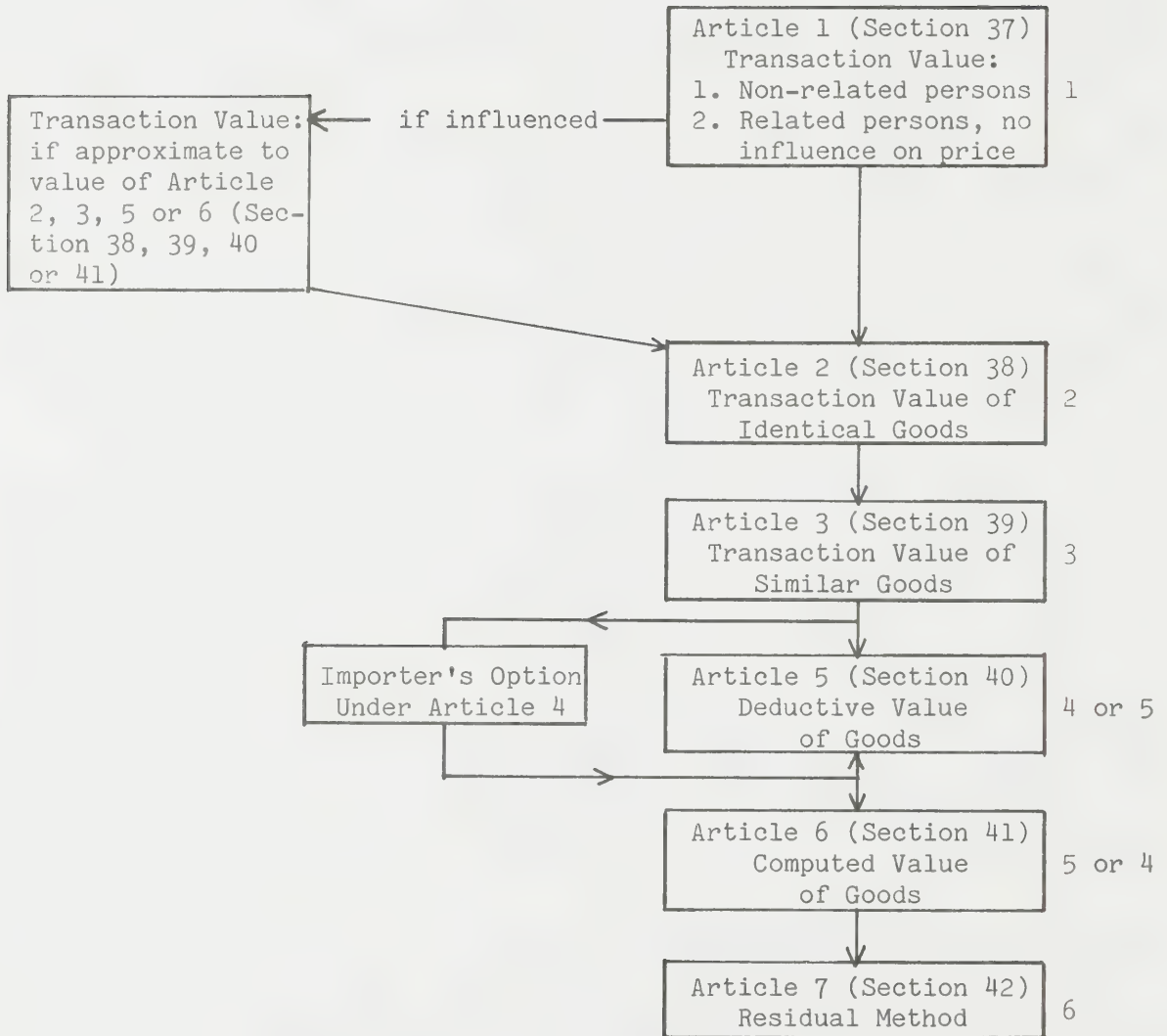
One of the major aims of the Tokyo Round of GATT negotiations was to reduce or eliminate these and other forms of trade protection and to bring them "under more effective international discipline". In this connection it was recognized that "customs valuation practices can have serious restrictive effects on international trade" and that valuation systems which give rise to uncertainty can have a more restrictive effect on trade than the actual level of customs duties. It was essentially as a means of reducing this uncertainty that the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade (known as the Customs Valuation Code) was formulated "to provide a fair, uniform and neutral system for the valuation of goods for customs purposes: a system that conforms to commercial realities and which outlaws the use of arbitrary or fictitious customs values."⁽⁴⁾

Methods of Valuation under the Code

The Code sets out, in a sequential order of application, six possible bases of customs valuation. These are: transaction value (of the actual goods); transaction value of identical goods; transaction value of similar goods; deductive value; computed value; and the residual basis of determination (see Diagram 1). The primary basis for customs value under the Agreement is "transaction value" as defined in Article 1,⁽⁵⁾ and imported goods are to be valued in accordance with the provisions of this Article whenever the conditions prescribed therein are fulfilled.

DIAGRAM 1

SEQUENTIAL ORDER OF APPLICATION
OF VALUATION METHODS



Note: Section numbers in brackets refer to corresponding provisions in Canadian draft legislation.

Where an admissible valuation cannot be made under the provisions of Article 1, the customs value is to be appraised "by proceeding sequentially through the succeeding Articles to the first such Article under which the customs value can be determined". However, the order of application of Article 5 (deductive method of appraisal) and Article 6 (computed method) "shall be reversed ... at the request of the importer", since "both these methods present certain difficulties".⁽⁶⁾

For most goods entering into international trade the expectation is that the basis of customs appraisal will be transaction value; and transaction value will very often be equated with invoice price. However, neither of these situations will always apply. Article 8 of the Code enumerates a definitive number of upward adjustments to the price actually paid or payable, to the extent that they are not already included in that price, to arrive at the transaction value. These charges include items such as commission and brokerage fees, the cost of containers and packing, the value of certain goods and services provided free of charge or at reduced cost by the buyer, royalties and licence fees, and the value of any part of the proceeds of any subsequent sale of the goods which accrues to the seller. The treatment of freight, handling and insurance charges is left to the decision of each signatory. It is provided that any additions made under Article 8 shall be "only on the basis of objective and quantifiable data".⁽⁷⁾

Whether or not the transaction value thus determined is adjudged acceptable for customs valuation purposes will depend upon the particular circumstances of the case. First, deficiencies in data may, in practice, frustrate the application of Article 8 adjustments to transaction price. Secondly, conditions affecting the disposition of goods subsequent to importation may make the transaction value suspect.

Thus, in some instances, restrictions may be imposed with respect to the marketing or use of the goods which substantially affect their value; the sale or price may be subject to some condition or consideration for which a value cannot be determined with respect to the goods being valued; part of the proceeds of any subsequent resale, disposal or use by the buyer may accrue directly or indirectly to the seller; while the buyer and seller may be "related persons" (e.g. officers or directors of one another's businesses),⁽⁸⁾ and the invoice price may not, in consequence, properly reflect existing market conditions.

In any of these situations the Code provides that, after reviewing the circumstances and consulting with the importer, the customs authority may rule the transaction value to be unacceptable, thereby leaving the goods to be valued by one of the subsidiary and sequential methods of appraisal.⁽⁹⁾

In the case of a sale between related persons, it is provided (under paragraph 2(b) of Article 1) that the transaction value shall be accepted as the value for duty if the importer is able to demonstrate, by reference to any one of a number of specified test values, that the relationship did not affect the price of the goods in question. It is further provided that the aforementioned tests "are to be used at the initiative of the importer and only for comparison purposes". Substitute values may not thereby be established.⁽¹⁰⁾

Where the transaction value of the goods being appraised is unacceptable, the next step (vide Article 2 of the Code) is for the customs administration to seek information in relation to the transaction value of identical goods imported at or about the same time.⁽¹¹⁾ In Article 15 "identical goods" are defined to mean "goods which are the same in all respects, including physical characteristics, quality and reputation". Minor differences in appearance would not preclude goods otherwise conforming to the definition from being regarded as identical. The Code makes it clear that identical goods must, in all instances, have been produced in the same country as the goods being valued, and sold for export to the same country of importation. It is further provided that only when there are no identical goods produced by "the same person" as the goods being valued that goods produced by "a different person" shall be taken into account.⁽¹²⁾

The transaction valuation of the identical goods may be adjusted to account for differences in quantities and trade levels, provided that "such adjustments can be made on the basis of demonstrated evidence which clearly establishes the reasonableness and accuracy of the adjustment". Article 2 provides that if, in applying this method of valuation, more than one transaction value of identical goods should be found, "the lowest such value shall be used to determine the customs value of the imported goods". Where there are no identical goods, or where necessary adjustments for differences in quantity and/or trade level cannot be made, this method of appraisal cannot be used.

Subsequently, under the provisions of Article 3 of the Code, the valuation process moves to an examination of the transaction value of similar goods imported at or about the same time as the goods being appraised.⁽¹³⁾ The Code's definition of "similar goods," in Article 15, states that, "although not alike in all respects" to the goods being appraised, they "have like characteristics and like component materials which enable them to perform the same functions and to be commercially interchangeable". Except for this difference, the rules governing the determination of the transaction value of similar goods are the same as those for identical goods.⁽¹⁴⁾

The Code provides (vide Article 4) that where the transaction value of similar goods cannot be used for valuation purposes, the deductive value of the goods shall next be appraised, unless the importer opts for appraisal on the basis of computed value.(15)

Under the deductive method, as provided in Article 5, the value for duty is based on the unit price at which the goods being appraised, or identical or similar goods, are sold to unrelated persons in the greatest aggregate quantity at the first commercial level after importation.(16) From this price, deductions are to be made for commissions, profit and general expenses, freight, handling and insurance, customs duties and other national taxes.(17)

Where there are no identical or similar goods, the importer is allowed 90 days in which to sell the imported goods in order to establish an arm's-length transaction price from which the deductions can be made. In those situations where the goods are not sold in the condition imported, but are further processed after importation, the deductive method of valuation may still be applied "due allowance being made for the value added by such processing", in addition to the aforementioned deductions.

Where the deductive method cannot be applied - for example, in cases where the imported goods are not resold - the next step is for the customs administration to seek to establish a dutiable value under the provisions of Article 6, using the computed method of appraisal.(18)

In order to determine a computed value, the customs administration will require information with respect to the costs of producing the imported goods. To this shall be added "an amount for profit and general expenses equal to that usually reflected in sales of goods of the same class or kind as the goods being valued which are made by producers in the country of exportation for export to the country of importation". Thus, in order to determine a computed value "it may be necessary" to obtain cost and related data from outside the country of importation. Hence, "the use of the computed value method will generally be limited to those cases where the buyer and seller are related, and the producer is prepared to supply to the authorities of the country of importation the necessary costings and to provide facilities for any subsequent verification which may be necessary".(19)

Where none of the above methods of valuation can be applied, Article 7.1 permits the use of a residual method of appraisal under which customs officials may determine the value for duty "using reasonable means consistent with the principles and general provisions" of the Valuation Agreement and "on the basis of data available in the country of importation".(20) However, it is further provided that:

2. No customs value shall be determined under the provisions of this Article on the basis of:
- (a) the selling price in the country of importation of goods produced in such country;
 - (b) a system which provides for the acceptance for customs purposes of the higher of two alternative values;
 - (c) the price of goods on the domestic market of the country of exportation;
 - (d) the cost of production other than computed values which have been determined for identical or similar goods in accordance with the provisions of Article 6;
 - (e) the price of the goods for export to a country other than the country of importation;
 - (f) minimum customs values; or
 - (g) arbitrary or fictitious values.

In elaborating on these provisions the note to Article 7 states that "the methods of valuation to be employed under Article 7 should be those laid down in Articles 1 to 6 inclusive, but a reasonable flexibility in the application of such methods would be in conformity with the aims and provisions of Article 7".⁽²¹⁾ The note provides several examples of such "reasonable flexibility", including one whereby "similar imported goods produced in a country other than the country of exportation of the goods being valued could be the basis for customs valuation".⁽²²⁾

Other Provisions of the Valuation Agreement

There are a number of other provisions in the Code, most of which it is anticipated will be reflected in the domestic legislation, official regulations or administrative practices of each signatory.

These provisions cover issues such as consultation procedures between the customs administration and importer (passim), notification by the former of the basis for the determination of the value for duty (Article 16), the treatment of confidential commercial information (Article 10), the basis for currency conversion (Article 9), arrangements respecting the withdrawal of goods from customs (Article 13), rights of appeal (Article 11) and publication of all pertinent laws, regulations, judicial and administrative rulings.⁽²³⁾ In Article 14 of the Agreement it is stated that the interpretative notes contained in Annex I, "form an integral part" of the Code, and that the Articles of the Agreement "are to be read and applied in conjunction with their respective notes".⁽²⁴⁾

Most of these provisions are discussed in some detail later, in connection with the Board's review of the Canadian draft legislation. Attention is, however, drawn here to Article 11, which stipulates that provision shall be made in the national legislation of each signatory for the right of appeal, without penalty, to a judicial authority, by the importer or any other person liable for the payment of the duty.⁽²⁵⁾

In addition to the Code itself, a Protocol which is deemed to be part of the Code, contains provisions for the special problems and trading needs of developing countries, permitting them some flexibility in applying the Code. The Code also provides for technical assistance to these countries to help them set up new valuation systems based on its provisions.⁽²⁶⁾

The Code provides for the establishment within the GATT of a Committee on Customs Valuation to supervise the implementation of the Code and allow signatories to consult on matters concerning its management. A Technical Committee under the auspices of the Customs Co-operation Council (CCC) in Brussels is also established.⁽²⁷⁾

Implementation by Trading Partners

Under Article 24 of the Valuation Agreement, implementation by those countries accepting the Code was to begin on January 1, 1981. The United States and the European Economic Community were able to amend their domestic legislation so as to implement the Code on July 1, 1980. The Board is not aware of any economically-advanced country, other than Canada, which is not now applying the provisions of the Code. However, under Article 21.1 developing countries may delay application of these provisions for a period of up to five years, and this period may, in certain instances, be extended.⁽²⁸⁾

The Board has examined copies of the implementing legislation of the other major signatories of the Valuation Agreement and is satisfied that such legislation is generally in keeping with the intentions and requirements of the Agreement.

The Board understands that under the BDV system most goods entering the EEC were, in fact, valued on the basis of the transaction price since this was usually accepted as the "normal price". The EEC has traditionally valued imports on a c.i.f. basis, and this arrangement has been carried forward under the new valuation system. This has seemingly meant that there have been no changes of substance in respect of the treatment accorded by EEC customs officials to most importations, and the Board is not aware of any especial problems in this regard.

In the case of the United States, the introduction of the new valuation system has been accompanied by a change in the customs treatment of freight. Previously the United States, like Canada, had valued goods on an f.o.b. point-of-direct-shipment basis, which meant that inland freight in the country of export was not included in the value for duty. Under the new system such inland freight is to be included whenever it is shown as being paid or payable directly or indirectly to or for the benefit of the vendor. Representations made to the Board indicate that this change in the dutiable status of freight on the part of the United States customs administration is causing considerable concern to Canadian exporters, the dutiable values of whose goods are thereby increased. Differences in the actual application of this duty element, as between different U.S. ports of entry, are also apparently causing some technical problems for Canadian business.⁽²⁹⁾

CHAPTER III. SUBMISSIONS TO THE BOARD

Introduction

A full account of all observations, suggestions and requests made to the Board with respect to the draft legislation on customs valuation will be found in the individual written submissions and in the transcripts of the public hearings. Opinions put forward in relation to matters of detail are reviewed elsewhere in this report, while the more general positions adopted by petitioning parties are outlined below.

In all, 15 written submissions (not including supplementary submissions)⁽¹⁾ were received by the Board from organizations representing producing or trading interests. Three further submissions, dealing with various technical or legal aspects of the draft legislation, were received from the Canadian Institute of Chartered Accountants, the Director of Investigations and Research of the Department of Consumer and Corporate Affairs, and Mr. J.G. Torrance, Q.C. Of the briefs submitted by, or on behalf of, the business community, approximately half emanated from organizations concerned with the manufacture or sale of textiles, apparel and related goods. Ten of the submissions originated with producers' associations and five with organizations representing predominantly trading or importing interests.

Among the submissions received by the Board were some addressed primarily to the subject matter of Phase II of the reference (concerning the envisaged impact of changes in the basis of valuation) rather than to the question of the appropriateness, or otherwise, of the draft legislation. Hence, while certain of the issues raised are noted below, full consideration thereof will be deferred by the Board until the second stage of its inquiry.

Canadian Manufacturers' Association

The submission of the Canadian Manufacturers' Association (CMA) addresses itself directly to the issue of the suitability of the proposed amendments to the Canadian Customs Act. In general, the CMA believes that the draft legislation properly incorporates the principles set out in the International Valuation Code. However, the view is also expressed that the intended legislation "leaves a great deal of uncertainty" on the matter of whether it will be possible for an importer to determine his liability for duty in advance of importation. Further, the Association finds the proposed Canadian legislation to be lacking in that it fails to

make specific provision for consultation between the customs administrator and the importer or for written communication from the former, in appropriate instances, giving reasons for the non-acceptance of transaction price.

On a related matter, the CMA expresses the opinion that the "manner in which ... regulations interpret and administer the legislation is at least as important as the legislation itself and should be subject to the appeal process accordingly". In connection with imports of goods which are assembled, packaged or further processed in Canada, the CMA does not support the 180-day limitation proposed with respect to the use of the deductive method of valuation, even though such a cut-off point is specified in the corresponding United States legislation.

In general, however, the Association feels that "it might be wise to try to ensure that Canadian procedures closely mirror U.S.A. procedures", once the latter - notably, in relation to the treatment of freight - have been "clarified".

Canadian Apparel Manufacturers Institute

According to the submission made on behalf of the Canadian Apparel Manufacturers Institute and its associated organizations,⁽²⁾ the proposed system of valuation "is not welcomed" by Canadian apparel manufacturers, whose preference would be for a less "liberal" system, such as that presently in place. However, it is recognized that Canada has formally agreed to adopt the new code and it "would not seem reasonable and responsible" to suggest that this decision should be reversed. While recognizing the protective aspect of present valuation arrangements, the brief stresses that systems of contingent protection, particularly quotas on imports from low-cost sources, provide the best assurances of market stability.

The point is made that the invoice price of most imports into Canada, under the existing fair-market-value provisions, is accepted without question or investigation. In the Institute's view "the detail of the law, and the detail of procedure, and the skill and vigour of administration are all critical" but there is no clear indication as to how Customs and Excise will administer the proposed system.

With respect to the draft legislation, the Institute's brief states that "except for those cases where the transaction value is accepted under Section 37 the legislation seems to lack the clarity necessary to enable importers and exporters to estimate values for duty with reasonable certainty". Reference is made to problems of non-consistent administration of customs valuation in the United States, particularly in relation to non-arm's-length transactions. Noting the discretion

which, it is envisaged, may be exercised by customs officers under the intended system of valuation, the Institute suggests that "inexpensive and prompt appeal mechanisms should be available", and in this connection moots the possibility of the establishment of a special appeals section within National Revenue.

Finally, it is claimed that the proposed amendments to the Customs Act "do not take account" of certain problems of concern to Canadian apparel manufacturers. These problems are indicated as relating to sales below actual cost of production; imports from state-controlled economies; imports of other-than-prime-quality merchandise; and the possibility of duty being collected on less than the actual selling price of goods.

Home Furnishing Industries Association

The Home Furnishing Industries Association represents the major independent non-integrated Canadian manufacturers of curtains, draperies, bedspreads, comforters and related products.⁽³⁾ In the Association's view the proposed legislation is "complex and complicated", while there is no "clear statement of administrative intent".

It is noted that existing customs valuation provisions provide a vehicle for "at least partially" regulating disruptively-priced imports of home furnishing products, particularly from the United States, while a like power is not provided in the proposed legislation. The Association feels that consideration of this matter should not be delayed until Phase II of the inquiry, but should be dealt with in the legislation itself or through regulation. In this connection it is recommended that "an importer's ability to use a transaction price under 37(1) should be limited to goods which are freely offered in the normal course of trade at prices which reflect full cost of production plus a reasonable profit". Thus, the value for duty of other-than-prime-quality merchandise, obsolete goods, closeouts and job lots should be computed under the proposed section 41 "on the basis of sales of prime quality merchandise sold in the regular course of trade", with values reduced by up to 20 per cent to take account of off-quality differences, obsolescence and like considerations.

The Association claims that "customs administration of the valuation law has been notoriously lax for many years, and invoice values are generally accepted for duty purposes". Hence, it could be argued that implementation of the new system of valuation would entail no actual loss of protection. However, what would be lost would be "the ability to request that the law be enforced properly and vigorously when the industry needs protection from improperly valued imports, that is, in periods of reduced economic activity or conditions of excess capacity".

Canadian Textiles Institute

The GATT Valuation Agreement is considered by the Canadian Textiles Institute (CTI) to be "a highly inappropriate basis" for Canadian legislation on customs valuation. A major area of difficulty from the Canadian standpoint is seen to lie in the "large and growing share of all Canadian imports" originating in transactions between related parties. The basic recommendation of the CTI is that "Canada should not accede to the Valuation Agreement for the valuation of textiles, including all commodities classified in Group 10 of Schedule A of the Customs Tariff".

In seeking to substantiate this position the CTI, both in its formal submission and supplementary opening statement, stresses the sensitivity of the Canadian textile industry to import competition, noting a number of problem situations which, it is claimed, would be "created or exacerbated" should the Canadian draft legislation be implemented. The point is made that "only 7% of the primary textiles imported into Canada last year were subject to quantitative restraint agreements".

Particular concern is expressed with respect to textile imports from state-controlled economies which, if valued under section 37, "are likely to attract less duty than the products of free enterprise countries". It is noted that the draft legislation "does not provide for the valuation of these goods by any other procedure if the transaction is at arm's length". The Institute questions whether the conditions set out in section 37 can be vigorously policed. At the same time it is suggested that the applicable criteria are "so vague" as to make the judgement of the port officer "difficult or impossible to audit". Further, the draft legislation "tacitly leaves" the "crucial decision" respecting choice of section to the port officer. The CTI recognizes the possibility that certain import problems now addressed by ministerial prescriptions might be dealt with under the proposed Special Import Measures Act, but it clearly has major reservations in this regard.

The Institute recommends that the Tariff Board should "identify and describe in Phase I all of those import problems which will be created by the draft legislation on customs valuation". Reference is made to the Canadian note of reservation, wherein the declared intent is "to maintain tariff protection at the levels that would prevail were Canada not to implement the Valuation Agreement". The CTI finds it "difficult to conceive" how this objective can be achieved by means of adjustments in Canadian tariff rates. The Institute, therefore, requests that the Board does not accept the draft legislation as a suitable basis for valuing Canadian imports "without having first established that the action contemplated by the Canadian Reservation to the Valuation Agreement is practicable."

Shoe Manufacturers' Association of Canada

The position of the Shoe Manufacturers' Association (SMAC) is, in fundamental respects, very similar to that of the Canadian Textiles Institute. The Association's submission stresses the sensitivity of the domestic footwear manufacturing industry to foreign competition, and, in this connection, the Board is asked to take account of an anticipated report of the Anti-dumping Tribunal on footwear imports. Of particular concern to the Association are imports of footwear originating in low-cost countries and state-controlled economies, the dumping or subsidization of foreign-manufactured footwear, and competition from goods obtained at "disposal" prices through end-of-season clearances, end-of-line sales and general inventory clearances.

Under the traditional Canadian system of customs valuation, the application of the concept of fair market value and the use of ministerial prescriptions have provided means whereby these various problems could be alleviated. Indeed, as a protective device, the prescriptions with respect to footwear are apparently regarded by those in a good position to know as "more effective than the global quotas"⁽⁴⁾. The Association notes that "the advances prescribed for individual countries range from 5% in the case of Spain to 50% for Brazil", and concludes that "obviously, there is no average rate increase which, applied on a MFN basis, can equitably and effectively replace these advances". The SMAC also finds it "difficult to conceive" how rate increase could "fairly compensate" for the loss of protection presently prescribed by the Minister on a general basis with respect to imports of job lots, discontinued lines and second-quality goods.

Accordingly, the Association's principal recommendation is that "Canada should not accede to the Agreement on Implementation of Article VII for purposes of valuing footwear imports". Should this recommendation not prove acceptable, the Association asks that the authority provided under section 39 of the existing Customs Act "to address customs valuation problems by means of ministerial prescriptions" should be retained, thus ignoring the restrictions set out in Article 7(2) of the GATT Valuation Agreement. In any event, the SMAC urges that the transaction prices of dumped or subsidized goods should not be accepted for customs valuation purposes, and that the draft legislation should be changed to require the Deputy Minister to reappraise imports retroactively on the basis of "normal value"⁽⁵⁾ in cases where dumping or subsidization is discovered subsequent to entry.

It is further proposed that the Board should include in its report in connection with Phase I of the reference an assessment of the problems created for manufacturers by the draft legislation, describing "in some detail" those difficulties which cannot be resolved by means of

tariff rate increases, and commenting upon the "apparent impossibility of addressing by way of rate increases the footwear import problems now regulated by ministerial prescriptions".

Canadian Chemical Producers' Association

In the view of the Canadian Chemical Producers' Association (CCPA), Canada's current system of customs valuation should be retained "as it more adequately deals with the special needs of Canadian manufacturers and importers by ensuring that goods imported under varying commercial circumstances are uniformly valued". The Association notes three specific areas of concern with respect to the proposed system of valuation - viz: the reduction in the level of tariff protection; the ability to deal with unfair and predatory trading practices, or with imports of less-than-prime-quality goods, used goods, or goods produced by state-controlled enterprises; and "the difficulty of administering the transaction system in Canada because a large proportion of Canadian imports are from related suppliers". With respect to most of these issues, the Board is referred to the position adopted by the Canadian delegation during the Multilateral Trade Negotiations.

The Association feels that none of the import problems of especial concern to its members would be resolved within the scope of the draft legislation in its present form, and it expresses a concern that "fully effective solutions may very likely not be found through adjustments to duty rates or through the use of other instruments of import policy". Accordingly, the Board is urged "not to foreclose the option of adjusting the draft legislation in such a manner that these concerns would be met". Respecting the administration of the proposed system of customs valuation, the Board is entreated to satisfy itself that legislative "safeguards" are provided to ensure the equitable valuation treatment of transactions between related parties and for the avoidance of excessive documentation requirements pertaining thereto.

On more specific issues, the CCPA notes that the draft legislation does not provide, as does the Code, for a process of consultation between the customs administration and the importer, nor for the importer to be informed in writing with respect to the basis of valuation in those cases where transaction value is unacceptable. It is also submitted by the Association that "in the absence of regulations or guidelines the draft legislation does not in itself provide for the determination of the value for duty of goods in advance of their importation when valued on other than the transaction value of the goods themselves". Finally, the Association "is satisfied that the rights of appeal are adequate".

Rubber Association of Canada

In its submission the Rubber Association of Canada (RAC) states that the customs valuation system currently in force "meets effectively the needs of Canadian manufacturers and importers". The Association is concerned that the introduction of the new system will compound the loss of protection already experienced as a result of the MTN tariff reductions. In particular, it is felt that whereas section 39 of the present Customs Act provides the means whereby limits can be set on the price discount allowable for customs valuation purposes, the proposed legislation "would appear to permit unlimited discounting" in the case of import transactions between unrelated parties. In this connection the Association notes the growing, if small, volume of retreaded tires and used tires imported into Canada, and the prospect of market disruption by imports of rubber non-tire products of less than prime quality.

In the Association's view, "specific measures" should be provided in the legislation to ensure that imports from state-trading countries "do not escape the duties payable on identical, like or similar goods from free-enterprise sources". Reference is made to the fact that the member companies of RAC are also importers, and "like all major tire producers in Canada, subsidiaries of multi-national enterprises". Their import transactions, therefore, are "normally not at arm's length". However, the Association "sees no assurance in the proposed legislation that importers ... will be treated uniformly".

Canadian Horticultural Council

The Canadian Horticultural Council refers to the implementation of many of the Tariff Board's recommendations under Reference No. 152,⁽⁶⁾ claiming that "any diminution of the newly adopted tariff schedules will have a deleterious effect upon the re-development of the fruit and vegetable industry in Canada, which is now at a critical stage". The Council points to the susceptibility of the domestic market to disruptively-priced imports on account of strong seasonal and climatic influences and the perishability of horticultural produce. It is felt that "transaction value safeguards" should be in place to protect the Canadian industry against the activities of itinerant truckers and jobbers operating out of northern centres in the United States. The principal concern of the Council is that "if existing Canadian tariff schedules were reduced to compensate for freight factors inherent in transaction values" a new pattern of horticultural production would develop in the more northerly U.S. states to the detriment of Canadian producers.

Canadian Food Processors Association

The Canadian Food Processors Association (CFPA), in a separate brief, indicates its agreement with the Horticultural Council's position that "a new system of valuation must not jeopardize the present rates of protection for the Canadian farming community". At the same time the Association argues that imports of fresh and frozen horticultural produce for further processing should not be penalized by "exorbitant" tariff rates, while the domestic processing industry should be adequately protected. Further, it is regarded as "extremely important" that existing provisions for the remission of duty, in appropriate instances, "remain intact".

Much of the Association's submission is taken up with a consideration of the customs treatment of freight. The view is advanced that, from the standpoint of the Canadian exporter, the c.i.f. basis of customs valuation employed by most other countries is "discriminatory and unfair". The CFPA believes that in order to achieve "parity in world markets" Canadian imports should also be valued on a c.i.f. ("c. and f. port of entry") basis. It is felt that if duties are assessed on inland freight only, this would discriminate against products imported from more distant parts of the United States in favour of products imported from countries such as Taiwan or Korea "where there is basically no or very little inland freight". Speaking to this point at the February 9th hearing, a Quebec processor related his position to a concern about imports from third world countries with "very low labour rates and, therefore, often a lower cost of production on an f.o.b. plant basis".⁽⁷⁾

In the Association's view, in the event of re-negotiation of tariff schedules, "it would be advisable to assess the ad valorem rates of duty based on country of origin as well as commodity group". If goods are to be valued on a f.o.b. port-of-export basis, the CFPA feels that "the determination of freight costs to the border of least distance will partially offset the inequities inherent in the use of a freight factor". A suggested alternative approach might be to "assign a numerical quotient" to "problem" countries with low inland freight costs in order to inflate such costs for duty purposes.

In conclusion, the Association urges that the loss of the capability to influence customs valuation through the instrumentality of fair-market-value investigations and ministerial prescriptions should be "accompanied by a corresponding rise in the speed and effectiveness of the enforcement of anti-dumping laws".

Ball and Roller Bearing Manufacturers' Association of Canada

In the view of the Ball and Roller Bearing Manufacturers' Association of Canada, whose members are "major importers, as well as manufacturers of anti-friction bearings", the Canadian draft legislation on customs valuation "is of sufficient clarity" to enable importers and exporters to estimate, with reasonable accuracy, the value for duty of goods in advance of importation. The Association further believes that the draft legislation "provides an adequate basis" for appeals to the Tariff Board in cases where there may be disputes as to the proper valuation of goods.

In a subsequent statement made at the February 9, 1981 hearing, the Association indicated general support for the position taken by the Canadian Manufacturers Association with respect to the proposed customs treatment of freight, suggesting that "the Board take into account the U.S. legislation in this particular area".⁽⁸⁾

Canadian Importers Association Inc.

As the principal representative of Canadian importing interests the Canadian Importers Association (CIA) takes the position that there is "no justification" for Canada's decision to defer implementation of the Valuation Code until January 1, 1985. Further, concern is expressed regarding the conditions of acceptance set out in the Canadian note of reservation. In the view of the CIA there are too many interpretative and definitional "loose ends and 'grey' areas" in the Canadian draft legislation which, "if not resolved, could have unfortunate and expensive consequences for Canadian importers".

Attention is particularly drawn to the lack of a "directive" providing for consultation between the customs administration and the importer in those instances where the declared transaction value is unacceptable. Moreover, it is felt that the importer's right to appeal "without penalty", as provided for in the GATT Code, should be clearly stated. The Association claims that the Canadian draft legislative provisions lack such interpretative guidelines "as are required" in determining whether or not companies or persons are 'related' for customs valuation purposes.

Under the heading of "Assurances", the Association notes that the Canadian document does not explicitly incorporate the basis for currency conversion in connection with the determination of dutiable value, neither, in the event of a delay in such determination, is there an assurance that the importer will have the right to withdraw goods from Customs upon deposit of security or provision of sufficient guarantee.

Rectification of the latter omission is felt to be "very important" for importers in view of promises which may be made to customers with respect to delivery dates. The fact that the draft legislation "does not guarantee the confidentiality of information provided for valuation purposes" is seen by the CIA as another serious omission requiring rectification.

Canadian Federation of Independent Business

The submission of the Canadian Federation of Independent Business is said to represent the "perspective" of "business people engaged in a wide range of commercial activities" who have "occasion to import". From this perspective, Canada's acceptance of the GATT Valuation Agreement is seen as a welcome step in the direction of simplifying and streamlining business people's dealings with government. However, the Federation finds that the draft legislation is "vague" in its wording and "complex and confusing" to those not trained in law, accounting or customs administration. If implemented, more specialized forms may be required to effect customs clearance, while it will be easier to make "technical errors or omissions". The Federation believes that the "cost of compliance will be high", as small companies will be forced to retain special advisors to meet customs requirements.

Furthermore, the draft legislation "gives too much discretion to administrators". In the opinion of the Federation, the language of the legislation should be simplified, and the scope for exercising administrative discretion should be "reduced to a minimum" through clearer wording and regulations. With respect to the latter, it is recommended that draft administrative guidelines concerning customs valuation should be published by National Revenue in the Canada Gazette, "providing adequate time for comment by interested parties".

It is further proposed that information required for customs valuation purposes should be "geared to the abilities of small and medium sized business to supply it", and that the limit on entries not requiring formal customs documentation should be raised to \$1,500 or \$2,000 from the present figure of \$500.

Canadian Association of International Textile Traders, and Textile Trade Association

In a joint submission these two associations of Montreal-based textile distributors claim that their members "account for the vast majority of imports of textile yarns and fabrics imported into Canada, excluding direct imports by the textile mills". They further state that, due to limitations in Canadian production capability, "over 50 per cent of the fabrics and yarns used by Canadian apparel manufacturers must be imported". The Associations express their concern about the types of

restriction which have been applied in the past to the importation of textiles into Canada, and in this connection they particularly draw attention to the way in which "the current customs valuation law discriminates against developing country exports". Adverse foreign comment on Canadian customs valuation practices is reviewed briefly, and it is noted that implementation of the draft legislation should remove the basis for most complaints.

In general, the CAITT and TTA "strongly support the thrust" of the proposed amendments to the valuation sections of the Customs Act; however, they feel that the "draft proposals are, in a number of areas, imprecise". This perceived lack of precision is seen as increasing the scope for the exercise of discretion by customs officials. In this connection the submission indicates a concern "about the way in which Customs might determine what is similar". There are other concerns regarding the types of information required and the procedures to be used for obtaining it. It is concluded that these uncertainties cannot be resolved without a "clear statement of administrative intent".

Japan Silk and Synthetic Textile Exporters'
Association, and Japan Chemical Fibres Association

Several of the essential points made in the submission of the Canadian textile distributors reappear in the brief put forward on behalf of the two abovementioned Japanese organizations. Thus, strong approval of the "thrust" of the proposed legislative amendments is tempered by concerns fostered by the vagueness and complexity of some of the wording of the draft provisions and by the lack of any "clear statement of administrative intent". It is pointed out that customs officers have a sworn obligation "to protect the Revenue",⁽⁹⁾ which could result in an over-enthusiastic application of the law. This is felt to be of particular concern to companies trading with parent or affiliate companies, "where the exercise of discretion by Customs officials will be most prevalent". One instance where the absence of clear guidelines "introduces a significant element of uncertainty" into the administration of customs valuation is in the interpretation of the term "sufficient information".

With respect to transactions between related parties, it is submitted that "it is very difficult to establish that a relationship does not affect a price", while appraisal of the value of goods on the basis of the computed or deductive method of valuation could "require a great deal of time". Accordingly, it is represented that "the non-acceptance of transaction prices between related companies does not seem equitable" and it is concluded that transaction prices should be "the only basis" for customs valuation.

Other issues of concern noted in the brief relate primarily to facets of the GATT Code which have not been included in the Canadian draft legislation. Thus, it is noted that the Canadian draft does not specifically list the prohibited methods of valuation, neither does it sanction safeguards against the disclosure of confidential information provided for customs valuation purposes. A further omission concerns the right of an importer to be informed in writing respecting the basis of customs valuation. Going beyond Article 16 of the GATT Agreement, it is submitted that this information should be provided to the importer "without his having to ask" for it.

Far East Trade Service Inc.

The Far East Trade Service Inc. carries on business in Canada as a service agent facilitating import and export trade transactions between Canada and Taiwan. In a detailed and closely-argued submission, this organization strongly urges upon the Board the view that uniformity, simplicity and equity should be the "bench marks" by which the draft legislation is assessed. Judged by these criteria, the proposed legislative provisions are found to be wanting in a number of essential respects, being, in the first instance, unnecessarily complex and compartmentalized. Further, while "whole articles in the Code have been omitted" from the draft legislation, some of the detailed provisions contained in the interpretative notes to the Code appear in the draft "with no apparent rhyme nor reason".

The preferred approach to these problems would be for the Board to "reject the draft legislation as presently constituted" and for it to recommend the direct incorporation of the Code into Canadian law. Alternatively, it is submitted that the amendments should be redrafted so as to reflect the "actual language of the Code and the full provisions contained therein". It is also represented that section 2(3) of the existing Customs Act, with its enjoinder respecting protection of the revenue,⁽¹⁰⁾ should be repealed, since its retention "runs counter to the 'true intent, meaning and spirit' of the Code". To avoid ambiguity in this regard, it is recommended that "at the very least" there should be a provision in the Canadian legislation "stipulating that the purpose of these new provisions is to give force to Canada's international obligations as contained in the Code", and specifically directing users to the Code and its interpretative notes for use as an aid in construing and applying the legislation. It is further submitted that the Board should not recommend acceptance of any draft legislation until it is satisfied that the "whole administrative machinery enacted thereunder" reflects the provisions in the Code.

On more specific points it is recommended that the legislation should be drafted "so as to incorporate clearly and explicitly the proce-

dural rights granted to the importer pursuant to the Code". It is further recommended that section 42, defining the residual basis for valuation, should be "completely redrafted to accurately mirror the specific provisions contained in Article 7 of the Code". With respect to the review and appeal process, it is proposed that the two levels of internal review within Customs and Excise should be replaced by one level.

Finally, looking ahead to Phase II of the reference, it is submitted that the Board should publicly "consider and adopt its methodology" before launching into this aspect of its work.

Canadian Institute of Chartered Accountants

The Canadian Institute of Chartered Accountants (CICA) finds that the draft legislation "is not in and by itself sufficient" to enable importers and exporters to estimate the value of their goods in advance of importation. Thus, with respect to currency conversion it is "unclear" whether the rate of foreign exchange is to be that in effect at the time of exportation or at the time of importation. It is suggested that one possible method of removing some of the uncertainties in this area would be to incorporate a definition of the phrase "sold for export to Canada" into the legislation. It is also recommended that the term "sufficient information" should be supplemented with a more precise definition in the legislation or regulations. Likewise, it is felt that the term "generally accepted accounting principles" (used in sections 4 and 5 of the draft statutory regulations) should be defined as in the interpretative notes to the Code, and naming the Canadian Institute of Chartered Accountants as the "recognized accounting authority within Canada". It is noted that existing problems with respect to the treatment of non-resident importers could be perpetuated by references in the draft legislation to "the purchaser in Canada".

The Institute does not support the "arbitrary choice" of 180 days with respect to the use of the deductive method of valuation in situations where goods are imported into Canada for further manufacture. On the subject of appeals, the CICA believes that "the legislation should itself instruct the authorities who will interpret it to refer to the Code and its interpretative notes as an aid to interpretation". It is further suggested that specific time limits within which Revenue Canada would be required to respond to appeals should be laid down in the legislation.

In the Institute's view, "the administrative rules to implement the legislation are essential to provide the needed clarity". These rules, possibly in the form of draft regulations "should be published and subject to public commentary ... well before the scheduled date for the implementation of the proposed legislation".

Individuals

The Director of Investigations and Research, Department of Consumer and Corporate Affairs, suggests that the wording of section 37(1)(a) of the draft legislation "seems to allow for the provision of market practices which may be restrictive and therefore contrary to the spirit if not the letter of the Combines Investigations Act".⁽¹¹⁾ Alternative wording is put forward.

Mr. J.G. Torrance Q.C. raises a question with respect to the definitions of "identical goods" and "similar goods".

A review of these and other definitions, and of the more detailed provisions of the proposed legislation, will be made subsequently.

CHAPTER IV. CONFORMITY OF THE PROPOSED LEGISLATION TO THE CODE

Introduction

In his letter of reference the Minister asks the Board to "examine the extent to which the draft legislation fully protects the rights, and gives effect to the obligations, that Canada would have as a signatory to the agreement". This task is essentially a matter of comparing the proposed legislation and the Code to make certain that all of the operational provisions of the Code would be implemented by the legislation. Submissions to the Board have underlined four main areas where the Canadian draft does not appear to be in strict conformity with the GATT Code. These pertain to: (i) the acceptability of transaction value in related-party situations; (ii) the requirement to inform and consult with importers; (iii) the specification of prohibited methods of appraisal; and (iv) the recognition accorded to the interpretative notes to the Code. In addition, there are various differences in wording which might result in the Canadian legislation being interpreted differently from the Code. Finally, there is the question of whether the French text of the proposed legislation conforms not only to the Code but also to the English text, and vice versa. The Board sought expert independent advice on this matter,⁽¹⁾ and also received helpful comments on the French text from the EEC Commission.⁽²⁾

Transaction Value and Related Persons

The conditions for the acceptance of transaction value as the basis of appraisal for customs valuation purposes are set out in section 37 of the Canadian draft legislation. Subsections 37(1)(d) and 37(2)⁽³⁾ treat the issue of sales between related parties. Several submissions to the Board question whether the intentions of the Code (as contained in Article 1, paragraphs 2(a) and 2(b) of the Agreement) are fully reflected in these two subsections. The relevant GATT provisions read:

2. (a) In determining whether the transaction value is acceptable for the purposes of paragraph 1, the fact that the buyer and seller are related within the meaning of Article 15⁽⁴⁾ shall not in itself be grounds for regarding the transaction value as unacceptable. In such case the circumstances surrounding the sale shall be examined and the transaction value shall be accepted provided that the relationship did not influence the price. If, in the light of information provided by the importer or otherwise, the customs administration has grounds for considering that the relationship influenced the price, it shall communicate

its grounds to the importer and he shall be given a reasonable opportunity to respond. If the importer so requests, the communication of the grounds shall be in writing.

(b) In a sale between related persons, the transaction value shall be accepted and the goods valued in accordance with the provisions of paragraph 1 whenever the importer demonstrates that such value closely approximates to one of the following occurring at or about the same time:

- (i) the transaction value in sales to unrelated buyers of identical or similar goods for export to the same country of importation;
- (ii) the customs value of identical or similar goods as determined under the provisions of Article 5 [i.e. by the deductive method];
- (iii) the customs value of identical or similar goods as determined under the provisions of Article 6 [i.e. by the computed method].

Only the clauses which are underlined appear in the Canadian version of these provisions. Thus, nowhere in the draft legislation is there a clear and simple statement that a transaction value should not be disqualified merely because the buyer and seller are related, while the procedures to be followed in investigative cases (as envisaged in Article 1, paragraph 2(a) of the Code) receive no mention at all in the Canadian text. As a result, the Code's intention to make transaction value the prime basis of valuation in all instances other than those where customs officials, acting on their own initiative, have reason to question its acceptability, does not clearly emerge. Accordingly, several submissions to the Board reveal a concern that acceptance of transaction values will be limited to importations from unrelated parties.

In order to resolve these problems the Board recommends that subsections 37(1)(d) and 37(2) be amended to provide that:

(a) the transaction value applying to the sale of goods between a buyer and seller who are related shall be regarded as unacceptable only where the requirements of subsection 37(2) are not met;

(b) where the buyer and seller are related, National Revenue officials shall, on their own initiative, examine the conditions surrounding the sale to determine whether or not there is evidence that the relationship influenced the transaction value; and

(c) where National Revenue officials are not able to satisfy themselves that the relationship did not influence the transaction value, the importer shall be given an opportunity to satisfy any one of the test values.

Consultation/Notification Procedures

A number of the submissions received by the Board comment on the fact that the proposed legislation does not specifically require customs officials to consult with importers during the appraisal process, as required by the Code, nor to notify importers of the basis for decisions. These procedures are mentioned in Article 1, paragraph 2(a) of the Code, quoted above;⁽⁵⁾ they are also mentioned in the general introductory commentary to the Code, in Article 7, paragraph 3, and in Article 16.⁽⁶⁾

There are a number of possible positions which might be adopted in relation to this issue. It might, for example, be argued that consultation and notification procedures do not need to be specifically mentioned because the proposed valuation system can work only if there is communication between customs officials and importers. Underlying this viewpoint is the legal precept that a tax cannot be levied and collected unless the grounds are explained.

A second possibility would be to amend the draft legislation to provide for only those consultations specifically noted in the Code. This solution is open to the criticism that the importer's rights in any other situation, not specified, might thereby be jeopardized.

A further possibility would be to amend the proposed legislation to provide for formal consultation and notification procedures in every instance where such procedures may conceivably be necessary and appropriate. The problem with this approach is that it would clutter up the legislation with a repetitive provision requiring consultation between the customs administration and importer at each and every step in the appraisal process.

A final possibility would be to include a general provision requiring National Revenue to consult with the importer throughout the process and to provide the importer with written explanations of decisions whenever so requested by the importer. A provision along these lines would possibly not result in any real change in Canadian customs practice so far as the great majority of imports are concerned, but it would ensure that Canadian legislation conforms fully to the Code and

would provide greater certainty to the business community. Indeed, this is the course preferred by most interested parties making representations thereon to the Board.

The Board considers that a clearly-framed requirement for the customs administration to consult with, and provide explanations to importers, in appropriate instances, is an essential prerequisite for the entire valuation process, including the review, reappraisal and appeal aspects. Furthermore, it concludes that this objective might best be achieved by means of a general provision covering consultation and notification procedures inserted between existing subsections 36(3) and 36(4).⁽⁷⁾

In consideration of the above the Board recommends that a new provision be drafted which would clearly provide in the legislation for consultations between National Revenue and the importer throughout the appraisal process and which would require National Revenue to provide, on request, a written explanation of how the value for duty of any goods had been determined.

Prohibited Methods of Appraisal

Sections 37 to 41 of the Canadian draft legislation set out the conditions pertaining to the five principal methods of customs valuation. Section 42 deals with the "residual basis of appraisal". The wording of this latter provision is as follows:

Where the value for duty of imported goods cannot be appraised under section 41, it shall be appraised on the basis of

- (a) a value derived from the methods of valuation set out in sections 37 to 41, interpreted in a flexible manner and reasonably adjusted to the extent necessary to arrive at a value for duty of the goods; and
- (b) information available in Canada.

This covers the same ground as Article 7, paragraph 1 of the Code.⁽⁸⁾ There is, however, nothing in the Canadian text which corresponds to Article 7, paragraph 2 of the Code, with its list of seven prohibited methods of valuation used by various countries in the past. Among the appraisal criteria thus excluded are: "the selling price in the country of importation of goods produced in such country" (i.e. the

American Selling Price system); "the price of goods on the domestic market of the country of exportation" (the Canadian fair-market-value system); and "arbitrary or fictitious values" (applied in the Canadian case by the use of ministerial prescriptions and in the U.S. by the "Final List").

It is clear that the prohibited methods of valuation are a very important element of the Code. The United States, the European Economic Community and other signatories of the Valuation Agreement have listed the prohibited methods of valuation in their domestic legislation. Moreover, the U.S. Customs Service has, as well, incorporated a listing of the prohibited methods in its new valuation regulations for the greater certainty and guidance of its officials.

Certain trading interests (most especially the Far East Trade Service Inc.) have represented to the Board that the Canadian draft legislation should be amended to incorporate the prohibited methods of valuation, there being a concern that the present wording of section 42 would permit the continued use of "arbitrary or fictitious values". On the other hand, certain manufacturers' associations (notably, the CTI, SMAC and RAC), whose members have benefited from the protection afforded by ministerial prescriptions, have made it clear that they do not wish Canada to accept Article 7, paragraph 2 of the Code.

It appears to the Board that the issue is not whether the Canadian legislation should permit the use of ministerial prescriptions. Clearly, the Code does not, and, therefore, neither should the amendments to the Customs Act. The issue is whether the draft amendments as submitted to the Board are sufficient with respect to prohibiting the methods of valuation listed in Article 7.2 of the Code, or whether it is necessary to incorporate the provisions of the Article specifically into the Canadian text.

The Board has studied the relevant section of the proposed legislation (section 42) and is satisfied that, in applying this section, only the methods of appraisal set out in sections 37 to 41 may be considered. None of these methods entails the use of arbitrary or fictitious values or any of the other prohibited methods of valuation; implicitly, the use of such methods under section 42 is also prohibited.

The Board is satisfied, therefore, that in this regard the proposed legislation is fully in conformity with the spirit of the obligations incurred by Canada as a signatory of the Valuation Agreement. Accordingly, no change to the wording of section 42 is recommended.

Incorporation of Interpretative Notes

Article 14 of the Code states that the annexes to the Valuation Agreement form an "integral part" of the Agreement.⁽⁹⁾ For implementation purposes Annex I, the interpretative notes to Articles 1 to 15 of the Code, is particularly important. However, there is no reference to, and virtually no incorporation of, these notes in the Canadian proposed legislation. Moreover, only a few of the interpretative notes are reflected in the draft regulations which form part of the proposed amendments to the Customs Act.

This is not only a question of conformity between the draft legislation and the Code; the issue of clarity is also involved. A widely-felt anxiety, voiced by almost all participants at the hearings, concerns the matter of how the new valuation system will be applied in practice. Several submissions have suggested that the administrative guidelines, presently being developed by the Department of National Revenue, should be published well in advance of January 1, 1985, and made subject to the public-hearing process. It has also been suggested that the interpretative notes to the Code should be incorporated as an integral part of the Canadian legislation, thereby making for greater certainty in Canadian customs administration and ensuring conformity with the practice of other signatories to the Agreement.

The Board is of the opinion that much of the unease concerning the operation of the new valuation system stems from uncertainty inherent in the process of change, and it recognizes that such uncertainty is likely to remain pending the development and application of a firm, consistently-administered and well-understood set of operational guidelines. In studying this problem, however, the Board does not support the suggestion that the interpretative notes to the GATT Code should be incorporated as part of the Canadian legislation. The Board has reached this position in the belief that over time the interpretative notes will probably be amended and developed further as a result of rulings made, and decisions taken, by the Technical Committee on Customs Valuation of the Customs Co-operation Council and by the Code's Committee on Customs Valuation. If the interpretative notes were to be incorporated as an integral part of the Canadian legislation, even minor changes to the notes could not be implemented by Canadian customs officials without approval by Parliament. Such a procedure would be rigid and make updating difficult.

In seeking a solution as to how Canadian legislation can be brought more closely into conformity with the Code while also providing greater clarity and certainty for Canadian importers, the Board has considered how similar problems have been resolved elsewhere in domestic customs legislation. In this regard the Board notes that various aspects

of other international agreements to which Canada is a signatory have been referred to in section 16(4) of the Anti-dumping Act⁽¹⁰⁾ and section 18 of the Customs Tariff.⁽¹¹⁾ The Board notes that section 283 of the Customs Act permits the Governor in Council to establish such regulations.

Therefore, the Board recommends that the proposed legislation be amended by adding a provision along the following lines:

(1) The Governor in Council, on the recommendation of the Minister of National Revenue, may from time to time by regulation prescribe rules for, and explanatory notes to assist in, the interpretation and application of valuation procedures set out in sections 37 to 42.

(2) In the formulation of the rules and explanatory notes to be prescribed by the Governor in Council pursuant to subsection (1), the Governor in Council shall be guided, as nearly as may be, by the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade signed at Geneva, Switzerland, on April 12, 1979, including the Interpretative Notes, as amended from time to time.

Similar Goods

Article 15, paragraph 2(b) of the Code defines "similar goods" as goods "which, although not alike in all respects, have like characteristics and like component materials which enable them to perform the same functions and to be commercially interchangeable". In subsection 35(2) of the draft legislation "similar goods" are defined as imported goods that "closely resemble the goods being appraised in respect of component materials and parts and characteristics and are commercially interchangeable with the goods being appraised". It appears to the Board that, in the case of the Canadian text, the addition of the words "and parts" could have the effect of narrowing the range of goods which could be considered as "similar", while the omission of the words "which enable them to perform the same functions" could have the converse effect. It is impossible to determine in general terms the effect which these differences would have upon the calculation of transaction value.

The Board recommends, therefore, that the definition of "similar goods" in subsection 35(2) be amended by deleting the words "and parts" and adding the words "which enable them to perform the same functions".

Related Persons

The rules applying to related persons are among the most critical elements with respect to the operation of the new valuation system. They are particularly pertinent in the Canadian context because of the relatively high degree of foreign ownership of economic resources.

The Code's definition of "related persons", contained in Article 15, paragraph 4, is simple, straightforward and easily comprehensible. It reads:

For the purposes of this Agreement, persons shall be deemed to be related only if:

- (a) they are officers or directors of one another's businesses;
- (b) they are legally recognized partners in business;
- (c) they are employer and employee;
- (d) any person directly or indirectly owns, controls or holds 5 per cent or more of the outstanding voting stock or shares of both of them;
- (e) one of them directly or indirectly controls the other;
- (f) both of them are directly or indirectly controlled by a third person;
- (g) together they directly or indirectly control a third person; or
- (h) they are members of the same family.

In the Canadian categorization of related persons, contained in subsection 35(4) of the draft legislation,⁽¹²⁾ much of the clarity and comprehensibility of the language of the Code has been lost. This is particularly so in the case of paragraphs 35(4)(g) and (i), which appear to correspond, at least in part, to clauses (e) and (d) of the Code, listed above. The pertinent descriptions in the Canadian text are as follows:

- (g) a person who, directly or indirectly, controls or is controlled by another person and the other person; ...
- (i) any person who, directly or indirectly, owns, holds or controls five per cent or more of the outstanding voting stock or shares of a corporation, association, partnership or other organization and such organization.

By example of what is required, the Board notes the simple and straightforward manner in which "affiliated" companies are defined in section 31.4(5)(a) of the Combines Investigation Act - viz:

a company is affiliated with another company if

- (i) one is a subsidiary of the other,
- (ii) both are subsidiaries of the same company,
- (iii) both are controlled by the same person, or
- (iv) each is affiliated with the same company.

In studying this matter, the Board has referred to the corresponding legislative enactments of the United States and the European Economic Community. The EEC legislation repeats the language of the Code. The U.S. legislation uses slightly different language but it is still easily comprehended. The Board agrees with representations concerning the importance of this definition and supports the contention that the drafting of some of the clauses is ambiguous.

The Board recommends that further consideration be given to the drafting of subsection 35(4) in order to ensure that it conforms to the provisions of the Code and so that it will be readily understandable. In the latter connection, reference might usefully be made to the appropriate provisions of the Combines Investigation Act.

Commission and Brokerage

In specifying possible adjustments to transaction price, for purposes of determining customs value, Article 8, paragraph 1(a)(i) of the Code provides that the price actually paid or payable may be adjusted to include commissions and brokerage, except buying commissions.⁽¹³⁾ However, while commissions are specified in draft subparagraph 37(4)(a)(i),⁽¹⁴⁾ no mention is made of brokerage. There would appear to be no good reason for the exclusion of this adjustment element, which is encompassed in the corresponding legislative provisions of other signatories to the Agreement. Its inclusion would presumably result, in certain instances, in a slight increase in the valuation base for duty appraisal purposes.

Accordingly, the Board recommends that subparagraph 37(4)(a)(i) be amended to permit the inclusion of "brokerage".

Profit and General Expenses

In specifying the elements to be included in the determination of computed value, the Code makes provision, under Article 6.1(b), for:

an amount for profit and general expenses equal to that usually reflected in sales of goods of the same class or kind as the goods being valued which are made by producers in the country of exportation for export to the country of importation.

This is reflected in subsection 41(2)(b) of the proposed legislation in the following terms:

the amount determined in the manner prescribed, for profit and general expenses, considered together as a whole, generally reflected in sales for export to Canada of goods of the same class or kind as the goods being appraised made by the producers of the goods to purchasers in Canada who are not related to the producers from whom they buy the goods at the time the goods are sold to them.

This presents two problems - one of conformity to the Code and one of logic in the application of the proposed Canadian system.

On the conformity issue it will be noted that the Code refers simply to "producers in the country of exportation". There is no mention of whether or not such producers are related to purchasers in the country of importation. The draft legislation introduces a further restriction by stating "to purchasers in Canada who are not related to the producers". This restriction narrows the group of other producers whose profits and general expenses might otherwise be used and, where all other producers are related to purchasers in Canada, would render the computed method of valuation inapplicable.

In terms of logic, if the transaction values of other producers have been accepted, even though such producers are related to the Canadian importer, it is implied that such transaction values are legitimate and will not have resulted in any abnormal bias in the companies' accounting and general expenses. Therefore, there is no reason why such data on other related companies' profits and general expenses should not be used.

Accordingly, the Board recommends that in paragraph 41(2)(b) of the draft legislation, the words "who are not related to the producers from whom they buy the goods at the time the goods are sold to them" be deleted.

CONFORMITY OF THE FRENCH TEXT TO THE ENGLISH TEXT AND TO THE CODE

The Board makes the following recommendations with respect to the French text of the proposed legislation to ensure that it conforms more closely to the wording and intent of the Code and to provide for greater conformity of the French and English texts of the proposed legislation:

Section 35(2) "identical goods", para. (a).

"... are the same in all respects ..." is translated: "... sont à tous égards pareilles ...". The Code, in Article 15.2(a), uses "mêmes" rather than "pareilles".⁽¹⁵⁾

The Board recommends a change in wording to: "... sont les mêmes à tous égards ...".

Section 35(2) "similar goods", para. (a).

"... composants et pièces et à leur caractéristiques" ("component materials and parts and characteristics") is used, while Article 15.2(b) of the Code contains "ce qui leur permet de remplir les mêmes fonctions".⁽¹⁶⁾

The Board recommends that the wording of the Code be substituted, as appropriate, taking into account any amendments to the English wording of the draft legislation as proposed elsewhere by the Board.⁽¹⁷⁾

Section 35(2) "computed value".

"Valeur reconstituée" may not adequately render the notion of "computed value". Indeed, "reconstituée" may have a much broader meaning than "computed", as "reconstituée" essentially means "reconstituted" or "restored", without being restricted in application to computations. "Valeur calculée" is preferable, while also having the advantage of being in the Code in Article 6.1.⁽¹⁸⁾

The Board, therefore, recommends that "valeur reconstituée" be replaced by "valeur calculée".

Section 35(2) "deductive value".

The concept of "valeur de référence" is derived from the Code, Article 5.1,⁽¹⁹⁾ and its value is arrived at after certain "deductions". In this context, "valeur de référence" is not as appropriate as "valeur déductive". In addition, "méthod déductive" is used in the Code.

Accordingly, the Board recommends that "valeur déductive" be used rather than "valeur de référence".

Section 35(4) "related persons".

The Board notes that there is a difference between the preamble to the definitions in the French and English texts due to the inclusion in the English text of the phrase "or persons related to each other". The Board is of the opinion that this phrase adds nothing to the definition or clarification of "related" persons".

For conformity with the French text the Board recommends that the phrase "or persons related to each other" be deleted from the English text.

Section 36(2)(c).

The Board recommends that "valeur déductive" be substituted for "valeur de référence" (as per above).

Section 36(2)(d).

The Board recommends that "valeur reconstituée" be replaced by "valeur calculée" (as per above).

Section 37(4)(a)(i).

"... commissions in respect of the goods incurred by the purchaser" is translated: "... les commissions relatives aux marchandises et engagées par l'acheteur". "Engagées" has many meanings, including "undertaken" and "incurred". Article 8.1(a) of the Code, however, uses "supportées",⁽²⁰⁾ which is non-equivocal.

Accordingly, the Board recommends that "engagées" be replaced by "supportées".

Section 37(2).

"... à la même date ou approximativement à la même date" has a narrower meaning than "at the same or substantially the same time".

To follow the Code more closely, it is recommended that "au même moment ou à peu près au même moment" be adopted from the Code, Article 1.2(b).⁽²¹⁾

Section 37(4)(a)(iii).

The English version refers to "the packing costs and charges incurred by the purchaser in respect of the goods, including the cost of cartons, cases and other containers and coverings". In the French version "emballage" is used twice, once for "packing" and once for "containers". In addition, "coverings" has no equivalent in the French text.

It is recommended that "et autres enveloppes et contenants" be substituted for "et autres emballages". These words are used in Schedule III, Part I of the Excise Tax Act.

Section 37(4)(a)(v).

The phrase "disposition ou utilisation ultérieure par l'acheteur" is used. In paragraph 37(1)(a) of the draft legislation and Article 8.1(d) of the Code,⁽²²⁾ "cession" is used instead of "disposition".

The Board recommends that "cession" be used.

Section 37(6).

"The Governor in Council may make regulations ..." is translated: "Le gouverneur en conseil peut prendre des règlements ...".

The Board recommends that "établir" be substituted. This is the word used in the Tariff Board Act and the Anti-dumping Act.

Section 38(1).

"... where the value for duty of imported goods cannot be appraised" has been translated as "... la valeur en douane des marchandises

importées, dans les cas ou elle n'est pas déterminable". There is a difference in meaning between the words underlined, "n'est pas déterminable" being more subjective than "cannot be appraised".

The Board recommends "ne peut être déterminée" be used instead.

Section 38(3)(b).

"... if each such amount" is rendered by "... au cas où des montants".

The Board recommends that "un montant" be used rather than "des montants".

Section 38(4).

"... where there is no such transaction value but there are two or more transaction values of identical goods sold under the conditions described ..." is translated: "... à défaut, à des marchandises qui remplissent l'une des conditions visées ...".

The Board recommends that for consistency between the French and English texts, "identiques" be added after "marchandises".

Section 39(1).

"... in the same or substantially the same quantities as the goods being appraised" is rendered as "... et portent sur une quantité égale ou à peu près égale". The Code, in a note to Article 3,⁽²³⁾ uses the term "sensiblement" rather than "à peu près".

It is recommended that "sensiblement" be used instead of "à peu près".

Section 40(2)(a).

The Board recommends that the French text of section 40(2)(a) be reviewed and revised to bring it into accord with the structure of the English text and with the Code.

Section 42(a).

The English text reads: "... in a flexible manner and reasonably adjusted ...". The notion of "adjusted" has not been rendered in the French text.

The Board recommends that this inconsistency be eliminated by deleting the phrase "and reasonably adjusted" in the English text.

Regulation 3(a)(iv).

"whether a difference in values is commercially significant" is translated as "la différence de valeur est ou n'est pas notable au point de vue commercial". "Notable" may mean "perceptible". The word "significative" is used in the Code.⁽²⁴⁾

The Board recommends "significative" be used.

Regulation 4(a)(iii).

This should read "... s'ils", and not "si ils".

Regulation 4(b).

"Moules", not "modules", is the equivalent of "moulds".

Regulation 5(b) and Regulation 6(2)(b).

The Board recommends that "du groupe le plus étroit de marchandises" be substituted for "de la plus proche catégorie" to conform more closely to the Code.⁽²⁵⁾

General

Finally, with respect to the issue of conformity, the Board is aware of a number of other differences between the wording used in the draft legislation and that used in the Code. For example, in the Code, Article 5.1(a)(ii), dealing with the deductive method of valuation, the word "usual" ("habituels") is used with respect to transport, insurance and associated costs, charges and expenses. The draft legislation, in

paragraph 40(4)(b), uses "reasonable" ("raisonnables"). While this latter word has a somewhat more subjective connotation than "usual" ("habituels"), the Board feels that it more easily accommodates the acceptable exceptional circumstance or changing situation.

Lack of specific reference herein to such differences may be taken to imply that the Board either prefers the Canadian construction or is of the opinion that the differences are so minor as not to warrant a recommendation for change.

CHAPTER V. PROBLEMS OF CLARITY IN RELATION TO THE PROPOSED LEGISLATION

Introduction

The Minister's letter asks for the Board's views on whether the valuation rules are set out in the draft legislation in sufficient clarity to enable importers and exporters to estimate, with reasonable accuracy, the value for duty of their goods in advance of importation.

There are a number of facets to this issue. First, a lack of clarity may result from the existence of conceptual inconsistencies in the legislative provisions themselves. This is essentially the question of whether an exporter or importer will be able to determine the value for duty of his goods in advance, in instances where there may be uncertainty as to which of the various methods of appraisal will apply. Second, there is the question of the actual wording of the legislation. Is it clear and readily comprehensible? Does it convey the meaning intended? In certain instances there are doubts in this regard. Finally, even though the wording of a particular provision may be quite unambiguous and the general notion exactly conveyed, practical implementation may require the establishment of operational criteria and/or the exercise of subjective judgement. Uncertainties are thereby created, the resolution of which is likely to hinge, at least in part, upon the development and publication of working guidelines and the establishment of administrative precedents.

Conceptual Issues

(a) General

While well-understood operational criteria and consistent administrative application should help substantially in the reduction of uncertainty in the general sphere of customs valuation, very real difficulties in estimating value for duty are likely to remain in those instances where there is a prospect that goods may not be appraised on the basis of invoice price under the provisions of section 37. In a recent inquiry carried out by National Revenue, the results of which have been made available to the Board, it was found that approximately one-fifth of importations, in terms of number of transactions, would have been liable for appraisal under sections 38 to 42 of the draft legislation. Thus, under the proposed system of valuation, there is likely to be considerable uncertainty in relation to a significant proportion of imports with respect to the particular method of appraisal which will be applied.

An importer may or may not know whether a particular shipment will be forced out of section 37 because it fails to meet the criteria of paragraphs 37(1)(a) to (d).⁽¹⁾ Even where the exporter and importer are related they will not know in advance: (i) whether the customs administration will accept the transaction value; (ii) if the transaction value is questioned, whether the importer will be able to satisfy any of the test values under section 37(2); (iii) if the importer cannot satisfy any one of the test values, which of the alternative methods of appraisal will actually be applied.

The Board recognizes that these uncertainties follow from the provisions of the Code. It seems reasonable to the Board, however, in the light of expressions of concern regarding difficulties in predicting which method of appraisal will apply, and with a view to ensuring equitable and non-discriminatory treatment as between all importers, that domestic implementation should not exacerbate inherent uncertainties arising from the Code. The Board has taken the view, therefore, that the uncertainties under the proposed system should be minimized to the greatest possible degree by ensuring that the elements of adjustment under all methods of appraisal are as uniform as possible. The Board is of the opinion that if there is uniformity of treatment of the various elements under all methods of appraisal, the importer should be able to predict the value for duty with reasonable accuracy regardless of the method of appraisal which may be applied at the time of importation.

The Board, therefore, makes a major and fundamental recommendation that all elements of adjustment or calculation should apply equally to all importations under all methods of appraisal.

(b) Engineering, Development and Design Services

Following from the above recommendation, the Board has reviewed the proposed legislation and has found two situations, one minor and the other major, where the elements of adjustment are treated differently as between the various methods of appraisal. In Diagram 2, all assists and deductions, with respect to all methods of appraisal, have been graphically integrated.

The minor difference referred to above, concerns the treatment of an assist, i.e. any "engineering, development work, art work, design work, plans and sketches" undertaken in Canada which is "necessary for the production of the imported goods" and is provided by the buyer to the seller free of charge or at a reduced cost. Under clause 37(4)(a)(iii) (D) the "apportioned" value of such work, when undertaken elsewhere than in Canada, is to be added to the price paid or payable in calculating the

DIAGRAM 2

CALCULATION OF VALUE FOR DUTY:
TABLE OF ADJUSTMENTS AS PER DRAFT LEGISLATION

Sections of Draft Legislation		Adjustment Elements	
40(4)(a)(i)	-	Commissions	← Resale Price
40(4)(a)(ii)	-	Profits, general (marketing) expenses	
40(4)(e)	-	Value added by assembly, packaging, or further processing in Canada	
37(4)(b)(ii)(A)	-	Costs of construction, erection, assembly, maintenance or technical assistance	*
37(4)(b)(ii)(C) 40(4)(d)	-	Duties and taxes	*
37(4)(b)(ii)(B) 40(4)(b)	-	Costs of transport, insurance & handling in Canada	*
37(4)(b)(i) 40(4)(c)	-	Costs of transport, insurance & handling between country of export & Canada	
			← Value for Duty
37(4)(a)(vi)	+	Costs of transport, insurance & handling in country of export	Proceeds to Vendor
37(4)(a)(v)	+	Proceeds of resale	
37(4)(a)(iv)	+	Royalties & licence fees	Expenses incurred by Purchaser
41(2)(a)(iv) & (v) 37(4)(a)(iii)	+	Value of goods & services supplied: materials, tools, materials consumed, engineering	
41(2)(a)(iii) 37(4)(a)(ii)	+	Packaging costs	
37(4)(a)(i)	+	Commissions	
41(2)(b)		Profit, general expenses	Costs of Vendor
41(2)(a)(ii)		Production or other processing	
41(2)(a)(i)		Materials	

* If identified separately per S.37(4)(b)(ii).

value for duty.⁽²⁾ By implication, no corresponding adjustment is to be made when the engineering or associated work is performed in Canada. Under the provisions of subparagraph 41(2)(a)(v), however, (which reflect note 3 to Article 6 of the Code),⁽³⁾ it is explicitly provided that such assists, when undertaken in Canada, are also to be included as a cost element in determinations of value based upon the computed method⁽⁴⁾.

In instances involving a 'domestic' assist of the kind indicated, the computed method of appraisal should theoretically yield a higher value for duty than the transaction value method. In so far as section 40 does not specify a deduction for such an assist, the deductive method of appraisal should theoretically yield a result similar to the computed method.

None of the participants at the public hearings appeared to find this disconcerting, and in the Board's view its impact with respect to the different methods of valuation is unlikely to be more than minimal.

Hence, the Board has no specific recommendation to make in regard to this matter.

(c) Treatment of Freight

(i) Proposed and Existing Provisions

The major issue concerns the treatment of freight, insurance and handling charges. The Code, in addressing this issue in Article 8, paragraphs 2 to 4,⁽⁵⁾ states that any additions to the price actually paid or payable on account of charges incurred in connection with transportation, loading, unloading, handling and insurance shall be made "only on the basis of objective and quantifiable data". By implication, freight and handling charges incurred subsequent to the arrival of goods at the port or place of importation are excluded from the reckoning. Otherwise, each signatory to the Agreement is free to determine which freight and associated cost elements to include, and which to exclude, in establishing a valuation basis for customs duty purposes.

In the Canadian case, which reflects current United States interpretation, subparagraph 37(4)(a)(vi) of the proposed legislation⁽⁶⁾ provides that the costs of transportation, insurance and handling until the goods have left the country of export are to be added to the price paid or payable "if such costs, charges and expenses are paid or payable, directly or indirectly to or for the benefit of the vendor". Excluded, therefore, are: (i) transportation and related costs in the country of export which are not "paid or payable ... to or for the

benefit of the vendor", (ii) international freight charges, and (iii) handling and associated charges incurred subsequent to importation.

All of the aforementioned elements are likewise excluded from the fair-market-value basis of valuation, presently applied by Canada, which uses the place of direct shipment as the principal geographical point of reference for customs valuation purposes.⁽⁷⁾ Indeed, the inclusion of any inland freight and associated charges with respect to the country of export (other than costs incurred in connection with the movement of goods between the factory/foreign port of entry and distribution warehouse) is conceptually incompatible with the notion of fair-market-value, although in the practical everyday world such charges may often be included in the determination of value for duty.⁽⁸⁾

In turn, the fair-market-value proposition poses a markedly different treatment of freight elements from that provided by the c.i.f. approach to valuation, long favoured by most major trading nations,⁽⁹⁾ whereby all transport and related costs to the point of importation (incurred with respect to the movement of goods over international, as well as inland, routes) are included in the basis of calculation.

The changes in the treatment of freight mooted in the draft legislation will serve to bring the Canadian system of customs valuation somewhat closer in this regard to the practices of the majority of GATT signatories. For this reason, and also because the Canadian system would thereby emulate that recently put into place in the United States, there might seem compelling grounds for proceeding along the lines indicated in the proposed legislation. However, while conceding that these are, indeed, strong arguments in favour of accepting the draft as put forward, the Board is of the opinion that there are discriminatory elements inherent in its provisions which seriously impair its acceptability.

(ii) Discriminatory Aspects

In the Board's view there are two separate problems in regard to the proposed treatment of the inland freight, insurance and handling charges in the country of export (hereinafter referred to as "the inland freight").

First, in the calculation of transaction value under subparagraph 37(4)(a)(vi), the inclusion of inland freight costs only in those instances where they are "paid or payable, directly or indirectly to or for the benefit of the vendor" will discriminate against certain importers compared to others. It will certainly discriminate against any goods which are sold on the basis of a common delivered price compared to goods which are sold on an f.o.b. ex-factory basis. It will also tend to discriminate against exporters who ship via their own vehicles. It will

discriminate in favour of those traders who are able to arrange their business transactions in such a way that the inland freight is not shown on the invoice. The fact that the proposed legislation permits such arrangements also raises the possibility of fraudulent documentation, which could lead to administrative enforcement problems.

For these reasons, in addition to its contradiction of the principle of uniform treatment of the elements of adjustment, the Board is unable to support the proposed treatment of the inland freight adjustment set out in section 37.

The second problem is that, as presently provided under the draft legislation, the treatment of the inland freight adjustment varies as between the various methods of appraisal. As has just been noted, depending upon the particular circumstances of the case, inland freight may or may not be included under section 37. This means that when reference is made to the transaction values of identical or similar goods under section 38 or 39 the inclusion or not of the inland freight is totally beyond the control or knowledge of the importer. In fact, depending on the information system developed by National Revenue, it may be unknown whether or not the transaction values of identical or similar goods include inland freight.

This could be of some relevance where the invoice of the goods being appraised clearly establishes that the inland freight is not payable to the exporter and would not be included if it were possible to appraise the goods under section 37. As a result, goods appraised by reference to transactions under section 38 or 39 may frequently result in both over-and under-valuation.

Where goods are appraised using the deductive method of valuation (section 40), inland freight will always be included in the value for duty since there is no provision for this element to be deducted. On the other hand, where goods are appraised using the computed method of valuation (section 41) inland freight is only likely to be included when goods are shipped on the basis of a common delivered price and freight is incorporated as an element of "general expenses".(10)

This situation creates a bias in the legislation, particularly to the advantage of related persons, to arrange to have their goods appraised by the computed method under section 41. As a result, the proposed legislation may operate to the advantage of related persons and discriminate against importers of the same goods who are involved in arm's-length transactions where the inland freight may be shown on the

invoice. In those instances where the value of the freight element of transactions between related persons is relatively high, which may frequently be the case, there could also be a diminution of the duties collected.

Finally, as noted above,⁽¹¹⁾ where the amount of the inland freight is significant, and where the importer is uncertain which method of appraisal will be applied, the importer will be unable to estimate, with reasonable accuracy, the value for duty in advance of importation.

The Board recommends, therefore, that the treatment of charges for inland freight, insurance, handling, loading and unloading be treated in the same manner under all methods of appraisal.

(iii) Possible Treatment of Freight Elements

The Board has considered the various ways in which freight and its related elements might be treated for customs valuation purposes. It has concluded that (a) since inland freight is often, in practice (if not in theory), subsumed in the price of goods imported into Canada under the existing fair-market-value system of valuation, (b) since inland freight would probably, in any case, be encompassed in the value for duty in a large proportion of instances where the pertinent draft legislative provisions to be implemented, and (c) since inland freight in Canada will generally be included as an element in the dutiable value of most Canadian exports, the draft legislation should be amended to include all freight, insurance and handling charges until the goods have left the country of export in the value for duty under all methods of valuation.

The Board recommends, therefore, that the proposed legislation be amended to provide that freight, insurance, loading, unloading and handling charges associated with the transportation of goods in the country of export be included in the value for duty under all methods of valuation.

There remains the question of the treatment of any costs or charges incurred for transportation, insurance and related services incident to the international shipment of goods from the country of exportation to the place of importation in Canada. At the public hearing on February 9, when this question was discussed, several producers' associations (not, however, including the CMA) urged that Canada should adopt the c.i.f. basis of customs valuation.

The Board has given this matter earnest consideration. It is of the opinion that there may, indeed, be advantages to Canada in the adoption of a c.i.f. system, not least because it would put Canadian customs valuation on the same conceptual basis as that in most other countries, without apparently prejudicing Canada's traditional trading relationship with the United States. However, the Board is loath, on the basis of present information, to propose a change of this magnitude in view of its unknown and potentially radical implications for the structure of tariff rates.

Accordingly, the Board recommends that Canadian imports be valued so as to include inland freight and associated charges in the country of export but not international shipment charges.

(iv) Air and Rail Freight Charges

When the issue of transport costs was discussed at the public hearings, the Board was asked to take account of the treatment of air freight in its recommendations. Evidence presented to the Board stated that, under the present Canadian system of valuation, goods are assumed to have left the country of export when they have been delivered to an airport in the country of export. It was noted, however, that, as with other modes of transportation, if the goods shipped by air were sold on the basis of a delivered or common delivered price, the cost of the air freight would be included in the value for duty.

It is understood by the Board that the European Economic Community includes in the value for duty a percentage of the air freight costs representing that proportion of total freight charges applicable between the airport in the country of export and the land frontier of the EEC.⁽¹²⁾

The United States Customs Service is now apparently using a similar system for the allocation of rail transportation costs with respect to exports from Canada, having been provided by the Canadian railways with statistical tables indicating the percentage of railroad revenue allocable to rail transportation in Canada in regard to different categories of goods and different terminal points.⁽¹³⁾

The Board is of the opinion that it would be a comparatively simple task for National Revenue to assemble similar tabular material for the purpose of allocating freight charges in respect of goods imported into Canada and so recommends.

Matters of Wording

(a) Import into Canada

According to the draft legislation, subsection 35(2), "'import' means import into Canada".⁽¹⁴⁾ It has been represented to the Board that this definition is imprecise with respect to the actual time of importation. The Board is of the opinion that this is a valid concern particularly with respect to the application of the deductive method of appraisal, whereby the importer has 90 days "after the importation of the goods" in which to establish a resale price or, where the goods are to be further processed, 180 days.⁽¹⁵⁾ The Board agrees that for the fair and equitable operation of these time limits it is important for all parties to be fully aware of the clocking arrangements. The Board also notes that in the draft revisions to the Customs Act⁽¹⁶⁾ the term "release" has been introduced to denote the point in time at which the importer achieves physical possession of goods after they have passed through Customs. In the Board's view this is the logical reference point with respect to any future obligations on the part of the importer.

The Board recommends, therefore, that for the purposes of sections 37 to 42, "import" should be defined as referring to the date on which the importer achieves physical possession of imported goods in Canada. The Board recommends further that, when the revised Customs Act is passed, the definition of "import" in subsection 35(2) of the proposed valuation legislation should state that "import" refers to the date on which imported goods are released from Customs.

(b) Purchaser in Canada

The term "purchaser in Canada" appears in subsections 37(1) and (4), 38(1) and 39(1) of the draft legislation. In subsection 37(1) the relevant provision reads:

"... the value for duty of imported goods is the transaction value of the goods when the goods are sold for export to Canada by a vendor to a purchaser in Canada if ...".

Corresponding wording appears in subsections 38(1) and 39(1) in connection with the transaction values of identical goods and similar goods respectively.⁽¹⁷⁾

It has been represented to the Board that the application of these references to a "purchaser in Canada" could result in problems involving situations where the goods are actually purchased by a foreigner

or by a non-resident importer. While the Board finds it difficult to conceive of situations where there will be no importer or agent in Canada who will be responsible for the goods, it recognizes that the terminology employed in these provisions might cause some confusion. In the Board's view the words "by a vendor to a purchaser in Canada", which are the cause of the problem, are superfluous and add nothing to the intended meaning.

Accordingly, the Board recommends that the words "by a vendor to a purchaser in Canada" be deleted from subsections 37(1) and (4), 38(1) and 39(1) of the proposed legislation and not be replaced.

(c) Conformity with Combines Investigation Act

The Board received representations from the Director of Investigations and Research, Combines Investigation Act, concerning the wording of paragraph 37(1)(a) of the proposed legislation. The relevant provision reads:

37(1) ... the value for duty of imported goods is the transaction value of the goods when the goods are sold for export to Canada by a vendor to a purchaser in Canada if

- (a) there are no restrictions respecting the disposition or use of the goods by the purchaser, other than restrictions that
 - (i) are imposed by law,
 - (ii) limit the geographical area in which the goods may be resold, or
 - (iii) do not substantially affect the value of the goods;

The Director notes that his interest in this wording is in respect of possible violations of the Combines Investigation Act. In this connection it is proposed that clause (ii) above, should be omitted, and that the phrase "... or the conditions associated with its resale in Canada by the purchaser or the purchaser's customers ..." should be inserted in preamble (a) between the words "purchaser" and "other".

The Board has compared the text of the proposed legislation with the corresponding provisions of the Code and is satisfied that, in this matter, the provisions of the draft accurately reflect the Code. With respect to restrictive trade practices, the Board observes that paragraph 1(a)(iii) of the interpretative notes to Article 1 of the Code states

that "among restrictions which would not render a price actually paid or payable unacceptable are restrictions which do not substantially affect the value of the goods". An example of such restrictions would be "where a seller requires a buyer of automobiles not to sell or exhibit them prior to a fixed date which represents the beginning of a model year". In the Board's opinion such examples are not ordinarily thought of as harmful restrictions of trade.

The Board further notes that, additional to the provisions of the Combines Investigation Act, section 16 of the Customs Tariff permits the Governor in Council to appoint a federal judge to inquire into and report on any conspiracy, combination, agreement or arrangement alleged to exist among manufacturers or dealers in any article of commerce. Under this section, import duties may, in appropriate instances, be reduced so as "to give the public the benefit of reasonable competition in the article". Section 4(3) of the Tariff Board Act⁽¹⁸⁾ also provides that the Governor in Council may refer such matters to the Tariff Board.

In the light of the above, the Board is of the opinion that no changes are required in paragraph 37(1)(a) of the proposed legislation in order to protect the Canadian consumer against restrictive trade practices.

Administrative Considerations

(a) Sufficient Information

The administrative interpretation of the term "sufficient information" is one of the key issues in determining under which section of the valuation legislation goods will be valued. Thus, in subsection 38(3) of the Canadian draft, wherein is treated the question of adjustments with respect to the calculation of the transaction value of identical goods, it is stated:

For the purposes of determining the value for duty of any imported goods being appraised under subsection (1), the transaction value of identical goods shall be adjusted by adding thereto or deducting therefrom, as the case may be ... if each such amount and the adjustment therefor can be determined on the basis of sufficient information, and where any such amount or the adjustment therefor cannot be so determined, the value for duty of the goods being appraised cannot be determined on the basis of the transaction value of those identical goods under this section.

This constraint with respect to the availability of "sufficient information" applies to all the methods of valuation.⁽¹⁹⁾

Reference to section 35 of the draft yields the following definition:

"sufficient information", in respect of the determination of any amount, difference or adjustment, means objective and quantifiable information that clearly establishes the accuracy of the amount, difference or adjustment.

This definition is in close accord with that indicated by the Code.⁽²⁰⁾ However, in this connection, there are doubts in the Board's mind concerning the appropriateness of the word "clearly", which suggests a more definitive state of affairs than is likely to exist in very many instances. In practice, "clearly" may well be interpreted, for most routine customs purposes, as "adequately". However, whatever notion is invoked in this connection, it would seem to the Board particularly important that its application should be consistent and fair, and generally regarded as such.

Accordingly, the Board recommends that in the development of operational guidelines for the administration of customs valuation, the standards, measures and/or criteria proposed to be applied in the interpretation of the term "sufficient information" be rigorously defined and published for public comment well in advance of the actual implementation of the new valuation system.

(b) Generally Accepted Accounting Principles

A directly-related issue involves the construction to be placed upon the term "generally accepted accounting principles", which appears in sections 5 and 6 of the proposed regulations in connection with the determination of deductive and computed values.⁽²¹⁾ As already noted,⁽²²⁾ the Canadian Institute of Chartered Accountants has proposed that it be named in the amendments to the Customs Act as an authority to which reference should be made on this matter. However, while recognizing the expertise of the Institute's members in regard to the general formulation and application of accounting principles, the Board is not sympathetic to the suggestion that the CICA should be named in the legislation under review.

In reaching this position the Board notes that although, by implication, deductive valuations would need to be cast in terms of Canadian accounting theory and practice, computed valuations are required to

conform to the "generally accepted accounting principles of the country of production of the goods being appraised". The Institute, of course, does not make any claim to be the recognized authority for other countries' accounting systems. Moreover, from a legal standpoint, the Board is of the opinion that the rules governing the entire reappraisal and appeal process are clear and do not envisage or permit the referral of technical matters to independent professional bodies.

The Board, therefore, recommends that the draft operational guidelines of National Revenue be made available for public review well in advance of actual implementation of the proposed valuation system so that professional bodies and the public generally may have an opportunity to comment on them.

(c) Confidentiality of Information

Also in the field of data and their usage, is the matter of the confidential treatment of information. The Code provides, in Article 10, that "all information which is by nature confidential or which is provided on a confidential basis for the purposes of customs valuation shall be treated as strictly confidential by the authorities concerned". No such provision appears in the Canadian text, this being a matter of concern to some interested parties.

Given the high standards of confidentiality maintained by National Revenue in the past, there would appear to be no reason to suspect that departmental practice in this regard will change in the future because of the introduction of the new valuation system. The Board understands that this well-established tradition is based on the requirements of subsection 172(3) of the Customs Act, which is not being amended in the present instance. Moreover, it is anticipated that as and when the proposed revision of the Customs Act becomes law,⁽²³⁾ these requirements will be more precisely spelled out in a new and expanded section dealing with the protection of confidential information.

Accordingly, other than to note the importance of this aspect, the Board has no recommendation to make on this matter.

(d) Date of Currency Conversion

Section 43 of the draft legislation specifies that "the value for duty of the goods shall be computed in Canadian currency". This

raises the question of the rate of foreign exchange. One of the submissions to the Board suggests that section 43 might be amended to clarify the chronological reference point for currency conversion purposes. In this regard the Board notes that regulation 3 of the Currency Exchange for Customs Valuation Regulations⁽²⁴⁾ states that the rate to be used "shall be the rate prevailing on the date of direct shipment to Canada". The Board is satisfied that, in the context of the present valuation system, this is clear and that the time for both the currency conversion and the determination of the value for duty are the same. This would not be the case, however, following the Board's recommendation to value goods when they leave the country of export. The Board is of the opinion that the date for currency conversion should be the same as the date on which the goods are valued.

The Board recommends, therefore, that a consequential amendment be made to regulation 3 of the Currency Exchange for Customs Valuation Regulations to ensure that the date for valuation purposes and the date of currency conversion remain the same.

(e) 180-Day Time Limitation

Paragraph 40(2)(c) of the proposed legislation allows 180 days for the use of the deductive method of appraisal in the case of goods imported for assembly, packaging or further processing.⁽²⁵⁾ It has been suggested that this time constraint is arbitrary and could perhaps cause problems.

The Board appreciates these concerns but also considers it reasonable that both the importer and the customs administration should have some definite goal with respect to the point in time by which goods should be appraised and duties paid. For all practical purposes it would appear that the operation of such a time schedule would be workable only if the customs officer and the importer agree at the time of importation that the deductive method of valuation will be the method to be used. Undoubtedly there will be instances where, for any number of legitimate reasons, the goods may not have been further processed and resold within the 180 days stipulated.

In such situations the Board recommends that the deductive method of valuation be applied under section 42 (encompassing the residual basis of appraisal), with the 180-day time limitation (or, for that matter, the 90-day time limitation) interpreted "in a flexible manner".

CONCERNS ABOUT OTHER ASPECTS OF IMPORT POLICY

A majority of the submissions to the Board have argued that with implementation of the proposed legislation on valuation the Canadian economy will be much more open to market disruption due to unfair and predatory pricing practices. From the evidence it is clear that many of these concerns are in respect of dumped or subsidized imports but there is also a general underlying concern that goods will simply be undervalued. On reviewing the evidence the Board has concluded that the main reason for this is the fact that, as yet, there is no clear statement of administrative intent or policy indicating how the proposed legislation will be enforced. The Board notes, however, that Article 17 of the Code recognizes the "rights of customs administrations to satisfy themselves as to the truth or accuracy of any statement, document or declaration presented for customs valuation purposes". The Board has been advised formally by the Deputy Minister of National Revenue for Customs and Excise that administrative enforcement policies and procedures are being developed and that these will be made public well in advance of implementation.

The Board recommends that such enforcement policies and procedures be incorporated as part of National Revenue's guidelines on customs valuation as recommended earlier.

(a) Unfair and Predatory Pricing Practices

On reviewing the evidence the Board concludes that the Canadian business community is of the opinion that the present valuation system has provided at least some protection against unfair and predatory pricing practices, e.g., dumping and subsidization, through fair-market-value investigations and ministerial prescriptions. Industry has concluded that there will be a loss of this protection with the introduction of the proposed valuation system and they have appealed to the Board to address these issues in the context of its Phase I Report. The Board has studied the evidence and concluded that, under the proposed system, where goods are appraised on the basis of their transaction value (section 37) there may be some loss of both protection and revenue due to the inability to carry out either fair-market-value investigations or to apply ministerial prescriptions. The Board, therefore, recognizes that the concerns expressed in many submissions are legitimate.

In considering the problem of unfair and predatory pricing practices, the Board notes that the Preamble of the Code states that "valuation procedures should not be used to combat dumping" and the Board is satisfied that the proposed legislation gives effect to this obligation.

In reaching this opinion, however, the Board is not suggesting that adoption of the new valuation system will reduce in any way Canada's rights to deal promptly and effectively with unfair and predatory pricing practices. Nor does the Board consider that the drafters of the GATT Valuation Code had any intention that it should have such an effect.

In this regard, the Board notes that, at the same time as the Valuation Code was being drafted, the 1968 GATT Anti-dumping Code was being amended and strengthened and the Code on Subsidies and Countervailing Duties was also being drafted.⁽²⁶⁾ Thus, within the overall context of the GATT, the rights of countries to protect domestic industries from unfair and predatory pricing practices is fully recognized and provided for.

The Board notes that within the framework of both existing and proposed legislation the Deputy Minister may respond to complaints and also has the right, indeed the responsibility, to act on his own initiative against unfair and predatory pricing practices.⁽²⁷⁾ This responsibility is twofold. First, there is a responsibility to protect Canadian industry from material injury or threat thereof. Second, there is a responsibility to protect the government's revenue. In the Board's view, under all of the proposed import policy and valuation legislation, it will be possible for the Deputy Minister, on the basis of information available within the customs administration, to determine quickly by reference to importations of similar goods whether or not goods are being imported at dumped/subsidized prices which might cause injury. Therefore, in the light of such information the Deputy Minister could initiate an investigation forthwith.

The Board understands that, under the administration of the present overall import regime, National Revenue generally only initiates anti-dumping or countervailing duty investigations following the receipt of substantiated complaints. The Board appreciates that there are two main reasons for this. First, from a technical point of view, National Revenue does not, as yet, have an import data base capable of providing prima facie evidence of dumping. The Board understands, however, that National Revenue is in the process of developing such a computerized data base and that it should be operational prior to implementation of the proposed valuation system. Second, the Board appreciates that, in the case of either anti-dumping or countervailing duty investigations, the Deputy Minister must be of the opinion that the dumping or subsidization is causing or threatening material injury to production in Canada. This opinion, of course, depends largely on whether the Deputy Minister is aware of the dumping or subsidization. At the present time, National Revenue must depend in large part on complaints from affected domestic producers for both these pieces of information. The development of a computerized data base containing information on the sources, quantities

and prices of imports will in future provide National Revenue in many cases with the prima facie evidence necessary to permit the Deputy Minister to initiate investigations on his own initiative. The Board is strongly of the opinion, therefore, that many of the concerns brought before the Board in this reference can be met in future by the willingness of the Deputy Minister to initiate, rather than only respond to, complaints about unfair and predatory pricing practices. The Board recognizes, however, that it would be unfair to expect the Department of National Revenue to instigate a more active role in the initiation of investigations respecting unfair and predatory pricing practices unless the government were to furnish clear direction to the Deputy Minister that, in future, he should draw on the information available in the data base to initiate investigations on his own initiative against unfair and predatory pricing practices.

Accordingly, the Board recommends strongly that, prior to the implementation of the proposed valuation system, the government furnish the Department of National Revenue with a clear direction authorizing the Deputy Minister to initiate anti-dumping actions against injurious, unfair and predatory pricing practices on the basis of information available to him.

(b) Imports from State-controlled or Non-market Economies

On a closely-related issue the Board received several submissions expressing concern about the envisaged valuation of goods from state-controlled or non-market economies under the proposed legislation. The evidence suggests that the main concern relates to the loss of the ministerial prescriptions which provide for the valuation of goods from state-controlled economies by a comparison with similar goods from a comparable free-enterprise economy. The concern reflects the general impression that state-controlled economies often sell goods for export at prices which do not fully reflect costs. The evidence presented argued that such prices should not be accepted as transaction values. While this is an issue which will be subject to inquiry under Phase II, the Board has nonetheless made a preliminary review of the problem.

The loss of ministerial prescriptions under the proposed system would not appear to be a problem where the exporter and importer are related since it will be possible to value such imports on a basis other than transaction value. However, where the exporter and importer are unrelated, in which instances the value for duty would probably be the transaction value under section 37, it is not clear whether the loss of ministerial prescriptions would be a matter of concern. The proposed legislation provides that, where goods are being valued on the basis of their

transaction value, the price paid or payable may be increased to take account of a number of adjustments when such adjustments are not already included in the price. Such adjustments are to be made on the basis of information prepared under "generally accepted accounting principles". If the Board's recommendation to include in the law a direct reference to the Code and the Interpretative Notes were adopted, then there would be sufficient flexibility that, where such information is not available, identical or similar goods produced in a country other than the country of exportation of the goods could be the basis for customs valuation. Thus, it would appear that the Code provides for the valuation of goods in some instances in exactly the same manner as is presently provided for by ministerial prescriptions.⁽²⁸⁾ What is needed are guidelines explaining how these provisions will be applied with respect to goods from state-controlled economies when traded between unrelated parties.

In addition, the Board also notes that, although the ability to impose ministerial prescriptions under sections 39(d) and 40 of the Customs Act will be lost with the implementation of the new valuation system, it will still be possible, where appropriate and necessary, to apply ministerial prescriptions under section 11 of the Anti-dumping Act.⁽²⁹⁾ The Board also notes that it is proposed to maintain this authority in section 14 of the draft Special Import Measures Act. Where the "normal value" or "export price" is established by ministerial prescription, it is to be expected that this amount will also be the transaction value of future sales, and thus the value for duty. Therefore, where the export price of any goods is established under the Anti-dumping Act, there will not be any necessity for ministerial prescriptions under the proposed valuation system.

In light of the above, the Board recommends that the administrative guidelines developed by National Revenue should contain specific rules for the valuation of goods from state-controlled or non-market economies. In addition, the Board strongly supports the maintenance of the ability to use ministerial prescriptions in the proposed Special Import Measures Act.

CHAPTER VI. REVIEW, REAPPRAISAL AND APPEAL PROCEDURES

In his letter of reference the Minister has asked for the Board's views on whether the draft legislation would provide an adequate basis for appeals to the Tariff Board in cases where there may be disputes as to the proper valuation of goods. The policy issues relating to the appeal procedures concern (a) what should be appealable to the Tariff Board, and (b) when and on what grounds should it be possible to lodge an appeal.

Under the present law (sections 46 and 47 of the Customs Act) an appraisal of the value for duty of any goods, made at the time of their entry, is final unless the importer, within 90 days, makes a written request to a Dominion customs appraiser for a reappraisal. This decision is final unless the importer, within 90 days, requests a reappraisal by the Deputy Minister. If the importer is aggrieved by the Deputy's decision, he may now appeal to the Tariff Board by filing notice with the Board within 60 days.⁽¹⁾ The whole review and appeal process can take up to two years from the date of importation.

The Board is of the opinion that the Minister's question as to whether the draft legislation "would provide an adequate basis for appeals to the Tariff Board" is sufficiently broad to permit comment on the whole process outlined above. This opinion is based on the fact that the Board is asked whether the draft legislation provides a "basis" for appeals, thereby suggesting that both the method of appraisal and the actual calculation of the value for duty should be subject to appeal. Such an interpretation would bring under examination all administrative decisions taken between the time of importation and the actual appeal to the Board, including any internal review and reappraisal process in National Revenue. The Board further observes that several submissions have commented on the review and reappraisal procedures as constituting part of the appeal process.

One problem addressed in the submissions relates to the amount of time required by the process, and it has been suggested that this concern might be mitigated if National Revenue were to establish maximum time limits for each stage of its internal examination of cases. This seems reasonable to the Board in view of the fact that the new valuation system envisages a close and continuous consultative process between the importer and National Revenue and will no longer involve delays due to fair-market-value investigations in the country of export. A further reason for prompt action is that, as currently administered, the importer has to pay the duty within 30 days of appraisal and is, therefore, entitled to expect that the review/reappraisal process will be carried out expeditiously.

A broader problem concerns the issue of what should be the subject-matter of appeals under the new system, and in this regard there would appear to be two major areas for consideration. First, there is the actual value for duty which may be arrived at under any of the methods of appraisal. This is a continuation of the basis for appeals under the present system. There is a second, and perhaps even more important, need for an appeal process under the new system resulting from the introduction of five alternative methods of appraisal, in addition to the transaction value, which are to be applied on a sequential basis.

In this connection there do not appear to be any new problems for normal arm's-length transactions being appraised under subsection 37(1), although disagreements could arise respecting the calculation of adjustments under subsection 37(4). The possibility for new problems, however, is greatly increased whenever the appraisal process moves to section 37(2) where the importer attempts to prove a negative - viz: that, although the importer and exporter are related, the relationship has not affected the transaction value.

The main problem, both here and under subsequent methods of appraisal, arises from the lack of either past practice or administrative guidelines which enunciate what constitutes "sufficient information" to satisfy National Revenue. This problem recurs each time National Revenue moves to a subsequent method of appraisal and is crucial whenever the residual method (section 42) is being applied.

As the legislation is presently drafted, it has been determined that the different methods of valuation will result in different values for duty. Accordingly, there will be a tendency for importers to seek out the method which places the lowest valuation upon their goods. In terms of equity there is the possibility, due to technicalities, that one importer might be able to use section 37 (transaction value) while another might be compelled to use section 40 (deductive method) and may face a higher value for duty for similar goods.

There could continue to be problems even if the legislation were amended to ensure that each method of appraisal yields roughly the same value for duty by harmonizing the elements of adjustment under each method of appraisal. Here again, an importer might be compelled for technical reasons to use the computed or deductive method, although the importer may believe that he should be able to use the identical or similar goods method where the actual value for duty would be virtually the same.

The importer's concern here is not only the liability for duty but also the extra work involved in providing the accounting data ("sufficient information") required under the computed or deductive method.

This type of problem is likely to arise whenever the importer can foresee a series of importations over time where it would be desirable to establish in advance that such goods can be appraised under the simplest method of appraisal. Therefore, it should be possible to appeal the method of appraisal to the Tariff Board in order to establish for the future which method of appraisal should be used.

Finally, the draft legislation introduces the possibility of new areas of contention whenever the residual basis of appraisal (section 42) is being applied. Under this method a value derived from any of the previous methods is to be "interpreted" in a "flexible manner" and "reasonably adjusted" to the "extent necessary" to arrive at a value for duty. None of these normative terms is defined. There are no regulations, nor does the legislation provide for regulations.

Recognizing the uncertainty which presently exists, there would appear to be a number of avenues open to the government, many of an administrative nature, which would facilitate the transition from the present to the proposed system of customs valuation. As already recommended,⁽²⁾ one such possibility, generally urged by interested parties as being highly desirable, would be for National Revenue to publish draft regulations and administrative guidelines for public review and comment well in advance of the actual implementation date. This is a procedure commonly followed by the United States government.⁽³⁾ In order to obtain an independent evaluation of the public response to draft regulations and administrative guidelines the government might choose to refer the matter to the Tariff Board for public hearings and a report. Such a referral should probably be made prior to the end of Phase II of this reference but perhaps with a report date during 1984.

Second, in regard to both the present and proposed system of customs valuation, concern has been expressed about the review/reappraisal process within National Revenue respecting (a) procedures and (b) the amount of time required. In terms of procedures, the suggestion has been made that one of the reappraisal steps could be eliminated. While recognizing the advantage of having only one level of review within National Revenue in terms of saving time, nevertheless, the two-step review/reappraisal process is probably beneficial in ensuring that the facts of a case are checked and fully documented as the basis for an appeal to the Board. However, the Board notes that the value of the second appeal would be diminished if, as a consequence of modern systems of communication, National Revenue's headquarters' staff were involved in the first level of review. Therefore, maintenance of a two-level review/reappraisal process only makes sense if it is clear that the first review is carried out at the regional level and the second is carried out at a separate and superior level within headquarters.

This is not to suggest, however, that implementation of the proposed system does not provide an opportunity for improvements. The present legislation establishes time limits within which the importer must file for a review but is silent on how long a review may take. This is not unreasonable given the need under the present system to carry out fair-market-value investigations in the country of export. The proposed valuation system is predicated on closer consultation between the importer and National Revenue, and where all previous methods of valuation are inapplicable, section 42 (residual method) provides that the valuation shall be based on "information available in Canada".

In the Board's view it should be possible under the proposed system of valuation to establish time limits for the review/reappraisal process by National Revenue since the necessary information should be more readily available.⁽⁴⁾ In the Board's opinion, if it is decided to maintain a two-stage review/reappraisal process within National Revenue, the second stage should be at a totally separate and superior level and the whole process should be completed within twelve months of the importation of the goods.

The question then arises as to the appropriateness of the procedures governing appeals to the Tariff Board. Here again, according to the law,⁽⁵⁾ the importer must file an appeal within a specific period of time, and the question might be asked whether there should not also be legislative time limits imposed upon the Board's response. There are several reasons why the Board considers this undesirable and possibly impractical. First, the Board recognizes the need to deal with appeals promptly and it has instigated procedures to hear all appeals in an expeditious and judicious manner. Secondly, the Tariff Board Act requires appeals to be heard by three members, and the uncertainty of the number and complexity of appeals in conjunction with time limits would create problems.

One such problem would be the enhanced possibility of further appeals to the Federal Court because of the denial of natural justice in attempting to meet statutory time limits. The Board is fully cognizant that, when hearing appeals, it sits as a court and must ensure that the principles of natural justice are observed. In this regard the Board would note that, having set a hearing date for an appeal the Board cannot prejudge the reasons given by appellants who subsequently request delays. The Board supports the principle that justice delayed is justice denied and has taken steps to reach a position where appeals will be heard within six months of the date of appeal.

In light of the above, the Board does not recommend any changes in section 47 of the Customs Act.

Finally, in the Board's opinion, greater use of references under section 49 of the Customs Act⁽⁶⁾ might usefully be made as a means of easing the proposed system of valuation into place and facilitating its longer-term operational functioning. A major impediment to the use of this statutory authority in the past would appear to lie in the fact that, although subsection 49(1) permits the Deputy Minister of National Revenue to seek the Board's "opinion" on valuation matters, subsection 49(2) requires that any such reference "shall be deemed to be an appeal".

As a result, the procedures to be followed by the Board in reaching an "opinion" are governed by the quasi-judicial procedures laid down for formal appeals. This requirement automatically increases the time and cost of such references and significantly impedes the arbitral function which the Board might otherwise perform.

The Board has given careful consideration to the possible effect of proposing that section 49(2) be amended to remove the requirement that references from the Deputy Minister be treated as appeals. The Board has concluded that such an amendment would be undesirable as it could create confusion as between the Board's "opinions" and "declarations" and could infringe on importers' appeal rights under section 47. The Board recognizes, however, that with the implementation of the proposed valuation system, and from time to time thereafter, issues of broad applicability respecting the operation of the new valuation system will arise which could usefully be referred to the Board. The determination of such general issues by the Board would clarify for all concerned, at an earlier stage than the normal appeal process, the manner in which the new valuation system will be applied. The Board recognizes that, in the past, and for legitimate reasons, some references from the Deputy Minister have not been dealt with as speedily as might have been hoped for. In this regard, the Board again notes recent measures which have been taken to speed up the appeal process generally and states its undertaking to deal with any references from the Deputy Minister under section 49 on an urgent basis.

The Board recommends that with the introduction of the new valuation system greater use be made of section 49 of the Customs Act for the interpretation of issues of broad applicability.

CHAPTER VII. SUMMARY OF VIEWS AND RECOMMENDATIONS

In reviewing the proposed Canadian legislation on Customs Valuation the Board has structured its deliberations within the framework of the primary issues posed in the Minister's letter of reference. The Board has considered the extent to which the draft legislation protects Canada's rights and gives effect to its obligations under the Valuation Agreement; it has examined the utility and acceptability of the proposed valuation provisions in regard to their clarity, comprehensibility and internal consistency; and it has addressed the question of the potential implications of the proposed system of valuation for the appeal process. In addition, the Board has reviewed the corresponding legislation of certain other signatories to the Valuation Agreement, with a view to obtaining a perspective on the way in which the Code is likely to be implemented by Canada's trading partners.

The Board's observations and recommendations with respect to the aforementioned issues are collated below. The page numbers which follow each viewpoint or recommendation refer to the place in the main body of the text where a fuller discussion of the pertinent issue will be found.

Implementation by Canada's Trading Partners

In his letter of reference the Minister asks the Board to take into account the way in which Canada's major trading partners have implemented their rights and obligations under the Agreement.

1. The Board has reviewed the legislation of the other major signatories, particularly the United States and the EEC, and has found that it is generally in keeping with the intentions and requirements of the Agreement.
(Page 17)

Conformity of the Proposed Legislation to the Code

The Minister asks the Board to examine the extent to which the draft legislation fully protects the rights, and gives effect to the obligations, that Canada would have as a signatory to the Agreement. In carrying out this examination, the Board has compared the provisions of the Agreement and the draft legislation. In addition, the Board has compared the French and English texts of the draft legislation to ensure that each yields the same interpretation. As a result of this examination, the Board makes the recommendations below.

The Board is of the opinion that the provisions contained in subsections 37(1)(d) and 37(2), with respect to the responsibilities of customs officials and the rights of importers, are not fully in conformity with the Code, nor are they clearly stated.

2. In order to resolve these problems the Board recommends that subsections 37(1)(d) and 37(2) be amended to provide that:
 - (a) the transaction value applying to the sale of goods between a buyer and seller who are related shall be regarded as unacceptable only where the requirements of subsection 37(2) are not met;
 - (b) where the buyer and seller are related, National Revenue officials shall, on their own initiative, examine the conditions surrounding the sale to determine whether or not there is evidence that the relationship influenced the transaction value; and
 - (c) where National Revenue officials are not able to satisfy themselves that the relationship did not influence the transaction value, the importer shall be given an opportunity to satisfy any one of the test values. (Pages 34-5)

In a number of instances the Code specifically requires customs officials to consult with, or notify importers at certain stages in the appraisal process. These obligations are not explicitly incorporated in the draft legislation.

3. In consideration of the above the Board recommends that a new provision be drafted which would clearly provide in the legislation for consultations between National Revenue and the importer throughout the appraisal process and which would require National Revenue to provide, on request, a written explanation of how the value for duty of any goods had been determined. (Page 36)

The prohibited methods of valuation listed in Article 7 of the Code are not specifically forbidden by the draft legislation. However, the Board is of the opinion that the use of such methods is not thereby sanctioned.

4. Accordingly, no change to the wording of section 42 is recommended. (Page 37)

Many interested parties are clearly concerned about the degree of administrative discretion which they feel is presently permitted by virtue of the absence of any reference in the draft legislation to an authoritative set of explanatory notes for use in the interpretation and application of the valuation provisions, and by the existing lack of any clear and well-defined regulations or operational guidelines pertaining thereto.

5. Therefore, the Board recommends that the proposed legislation be amended by adding a provision along the following lines:

(1) The Governor in Council, on the recommendation of the Minister of National Revenue, may from time to time by regulation prescribe rules for, and explanatory notes to assist in, the interpretation and application of valuation procedures set out in sections 37 to 42.

(2) In the formulation of the rules and explanatory notes to be prescribed by the Governor in Council pursuant to subsection (1), the Governor in Council shall be guided, as nearly as may be, by the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade signed at Geneva, Switzerland, on April 12, 1979, including the Interpretative Notes, as amended from time to time. (Page 39)

On the basis of the representations made, and in the light of its own examination of the evidence, the Board concludes that the draft legislation does not fully reflect the Code's definition of "similar goods".

6. The Board recommends, therefore, that the definition of "similar goods" in subsection 35(2) be amended by deleting the words "and parts" and adding the words "which enable them to perform the same functions". (Page 39)

The Board recognizes that the definition of "related persons" is a central feature of the proposed valuation system. On studying the evidence the Board has concluded that the proposed wording of subsection 35(4) may not conform to the Code and that some of the wording is unclear.

7. The Board recommends that further consideration be given to the drafting of subsection 35(4) in order to ensure that it conforms to the provisions of the Code and so that it will be readily understandable. In the

latter connection, reference might usefully be made to the appropriate provisions of the Combines Investigation Act. (Page 41)

With respect to the calculation of transaction value, the Code provides for an addition in respect of "commissions and brokerage". The draft legislation mentions only "commissions".

8. Accordingly, the Board recommends that subparagraph 37(4)(a)(i) be amended to permit the inclusion of "brokerage". (Page 41)

The Board has concluded, that, in respect of the calculation of profit and general expenses, the draft legislation is more restrictive than the Code.

9. Accordingly, the Board recommends that, in paragraph 41(2)(b) of the draft legislation, the words "who are not related to the producers from whom they buy the goods at the time the goods are sold to them" be deleted. (Page 42)

The Board makes the following recommendations respecting the conformity of the French text to the English text and to the Code.

Section 35(2) "identical goods", para. (a).

10. The Board recommends a change in wording to: "... sont les mêmes à tous égards ..." instead of "... sont à tous égards pareilles ...". (Page 43)

Section 35(2) "similar goods", para. (a).

11. The Board recommends that the wording of the Code be substituted, as appropriate, taking into account any amendments to the English wording of the draft legislation as proposed elsewhere by the Board. (Page 43)

Section 35(2) "computed value".

12. The Board recommends that "valeur reconstituée" be replaced by "valeur calculée". (Page 43)

Section 35(2) "deductive value".

13. The Board recommends that "valeur déductive" be used rather than "valeur de référence". (Page 44)

Section 35(4) "related persons".

14. For conformity with the French text the Board recommends that the phrase "or persons related to each other" be deleted from the English text. (Page 44)

Section 36(2)(c).

15. The Board recommends that "valeur déductive" be substituted for "valeur de référence". (Page 44)

Section 36(2)(d).

16. The Board recommends that "valeur reconstituée" be replaced by "valeur calculée". (Page 44)

Section 37(4)(a)(i).

17. The Board recommends that "engagées" be replaced by "supportées". (Page 44)

Section 37(2).

18. To follow the Code more closely, it is recommended that "au même moment ou à peu près au même moment" be adopted from the Code, Article 1.2(b). (Page 45)

Section 37(4)(a)(iii).

19. It is recommended that "et autres enveloppes et contenants" be substituted for "et autres emballages". These words are used in Schedule III, Part I of the Excise Tax Act. (Page 45)

Section 37(4)(a)(v).

20. The Board recommends that "cession" be used instead of "disposition". (Page 45)

Section 37(6).

21. The Board recommends that "établir" be substituted for "prendre". This is the word used in the Tariff Board Act and the Anti-dumping Act. (Page 45)

Section 38(1).

22. The Board recommends "ne peut être déterminée" be used instead of "n'est pas déterminable". (Page 46)

Section 38(3)(b).

23. The Board recommends that "un montant" be used rather than "des montants". (Page 46)

Section 38(4).

24. The Board recommends that for consistency between the French and English texts, "identiques" be added after "marchandises". (Page 46)

Section 39(1).

25. It is recommended that "sensiblement" be used instead of "à peu près". (Page 46)

Section 40(2)(a).

26. The Board recommends that the French text of section 40(2)(a) be reviewed and revised to bring it into accord with the structure of the English text and with the Code. (Page 46)

Section 42(a).

27. The Board recommends that "and reasonably adjusted" be deleted from the English text. (Page 47)

Regulation 3(a)(iv).

28. The Board recommends "significative" be used instead of "notable". (Page 47)

Regulation 4(a)(iii).

29. This should read "... s'ils", and not "si ils". (Page 47)

Regulation 4(b).

30. "Moules", not "modules", is the equivalent of "moulds". (Page 47)

Regulation 5(b) and Regulation 6(2)(b).

31. The Board recommends that "du groupe le plus étroit de marchandises" be substituted for "de la plus proche catégorie" to conform more closely to the Code.
(Page 47)

Problems of Clarity in Relation to the Proposed Legislation

(a) Conceptual Issues

The Minister asks for the Board's views on whether the valuation rules are set out in the draft legislation in sufficient clarity to enable importers and exporters to estimate, with reasonable accuracy, the value for duty of their goods in advance of importation. The Board has concluded that this estimation will not, in all cases, be possible because the elements of adjustment are not the same under all methods of appraisal.

32. The Board, therefore, makes a major and fundamental recommendation that all elements of adjustment or calculation should apply equally to all importations under all methods of appraisal. (Page 50)

The Board notes an inconsistency in relation to the treatment of value adjustments with respect to engineering, development and design services.

33. However, because of its minimal practical significance, the Board has no specific recommendation to make in regard to this matter. (Page 52)

The Board has concluded that the proposed treatment of freight, insurance and handling charges within the country of exportation is not consistent, and will result in discrimination between importers and exporters, sources of supply, and modes of transportation.

34. For these reasons, in addition to its contradiction of the principle of uniform treatment of the elements of adjustment, the Board is unable to support the proposed treatment of the inland freight adjustment set out in section 37. (Page 54)

35. The Board recommends, therefore, that the charges for inland freight, insurance, handling, loading and unloading be treated in the same manner under all methods of appraisal. (Page 55)

36. The Board recommends, therefore, that the proposed legislation be amended to provide that freight, insurance, loading, unloading and handling charges associated with the transportation of goods in the country of export be included in the value for duty under all methods of valuation. (Page 55)
37. The Board also recommends that international shipment charges be excluded from the value for duty under all methods of appraisal. (Page 56)
38. The Board is of the opinion that it would be a comparatively simple task for National Revenue to assemble tabular material for the purpose of allocating freight charges in respect of goods imported into Canada and so recommends. (Page 56)

(b) Matters of Wording

The Board makes the following recommendations with respect to particular aspects of wording.

Import into Canada

39. The Board recommends that for the purposes of sections 37 to 42, "import" should be defined as referring to the date on which the importer achieves physical possession of imported goods in Canada. The Board recommends further that, when the revised Customs Act is passed, the definition of "import" in subsection 35(2) of the proposed valuation legislation should state that "import" refers to the date on which imported goods are released from Customs. (Page 57)

Purchaser in Canada

40. The Board recommends that the words "by a vendor to a purchaser in Canada" be deleted from subsections 37(1) and (4), 38(1) and 39(1) of the proposed legislation and not be replaced. (Page 58)

Conformity with Combines Investigation Act

41. The Board is of the opinion that no changes are required in paragraph 37(1)(a) of the proposed legislation in order to protect the Canadian consumer against restrictive trade practices. (Page 59)

(c) Administrative Considerations

As noted under Item 5 above, interested parties are concerned about the present lack of administrative guidelines with respect to the proposed valuation system. It is felt that such guidelines should be published at an early date. There is a particular anxiety concerning the way in which such terms as "sufficient information" and "generally accepted accounting principles" will be interpreted by the customs administration.

42. Accordingly, the Board recommends that in the development of operational guidelines for the administration of customs valuation, the standards, measures and/or criteria proposed to be applied in the interpretation of the terms "sufficient information" and "generally accepted accounting principles" be rigorously defined and published for public comment well in advance of the actual implementation of the new valuation system.
(Pages 60-1)

There are also fears about the possible disclosure of confidential commercial information. This aspect is specifically treated in the Code but not in the draft legislation. However, the Board is satisfied that the protection of confidentiality is adequately provided for under the Customs Act.

43. Accordingly, other than to note the importance of this aspect, the Board has no recommendation to make on this matter. (Page 61)

There is some uncertainty as to the date of currency conversion. The Board is satisfied that this is adequately provided for under the present system but notes that the symmetry of the date for valuation and currency conversion would be broken under the proposed system.

44. The Board recommends, therefore, that a consequential amendment be made to regulation 3 of the Currency Exchange for Customs Valuation Regulations to ensure that the date for valuation purposes and the date of currency conversion remain the same. (Page 62)

It has been suggested that, under the deductive method of appraisal, the 180-day limit for further processing in Canada might create difficulties.

45. In such situations the Board recommends that the deductive method of valuation be applied under section 42 (encompassing the residual basis of appraisal), with the 180-day time limitation (or, for that matter, the 90-day time limitation) interpreted "in a flexible manner". (Page 62)

Some participants have suggested that, with the introduction of the proposed system of valuation, there could be a loss of protection due, in part, to the inability of National Revenue to check the value of the goods. The Board notes, however, that Article 17 of the Code permits National Revenue to check any statement. The Board assumes that adequate enforcement procedures will be developed by National Revenue.

46. The Board recommends that such enforcement policies and procedures be incorporated as part of National Revenue's guidelines on customs valuation as recommended earlier. (Page 63)

A majority of submissions have expressed concern that, under the proposed valuation system, the Canadian market will be more open to unfair and predatory pricing practices. These are matters to which the Board will return in Phase II, but it tentatively concludes that such problems can be dealt with under other legislation if the government so desires.

47. Accordingly, the Board recommends strongly that, prior to the implementation of the proposed valuation system, the government furnish the Department of National Revenue with a clear direction authorizing the Deputy Minister to initiate anti-dumping actions against injurious, unfair and predatory pricing practices on the basis of information available to him. (Page 65)

On a closely-related issue, concern has been expressed about the valuation of goods from state-controlled or non-market economies. Again, the Board is satisfied that other domestic legislation exists to deal with this matter where the need arises.

48. In light of the above, the Board recommends that the administrative guidelines developed by National Revenue should contain specific rules for the valuation of

goods from state-controlled or non-market economies. In addition, the Board strongly supports the maintenance of the ability to use ministerial prescriptions in the proposed Special Import Measures Act. (Page 66)

Review, Reappraisal and Appeal Procedures

The Minister asks for the Board's views on whether the draft legislation would provide an adequate basis for appeals to the Tariff Board in cases where there may be disputes as to the proper valuation of imports. Such disputes may involve either the method of valuation or the actual calculation of the duty. The Board is of the opinion that it should be possible to deal with such disputes more expeditiously under the proposed valuation system since the information will be more readily available.

49. In the Board's view it should be possible under the proposed system of valuation to establish time limits for the review/reappraisal process by National Revenue since the necessary information should be more readily available. In the Board's opinion, if it is decided to maintain a two-stage review/reappraisal process within National Revenue, the second stage should be at a totally separate and superior level and the whole process should be completed within twelve months of the importation of the goods. (Page 70)

The Board has also considered whether time limits might be provided for formal appeals to the Tariff Board. The Board has concluded, however, that because of practical considerations beyond its control and for legal considerations, it would be undesirable and inappropriate to establish time limits for appeals to the Board.

50. In light of the above, the Board does not recommend any changes in section 47 of the Customs Act. (Page 70)

The Board recognizes that, with the change in the system of valuation, legal interpretations are likely to be required with respect to a range of issues having broad applicability, most of which might usefully be referred to the Board as a forum for public consideration.

51. The Board recommends that with the introduction of the new valuation system, greater use be made of section 49 of the Customs Act (providing for references to the Tariff Board from the Deputy Minister of National

Revenue) in connection with the interpretation of
issues of broad applicability pertaining to customs
valuation. (Page 71)


Chairman
First Vice-Chairman
Member
Member
Member
Member

March 27, 1981

NOTES TO CHAPTERS

CHAPTER I. INTRODUCTION

1. Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade and Protocol, Geneva, 1979 (generally referred to in this report as "the Agreement" or "the Code"). For the text of this agreement see Appendix I, infra, pp. 97-115.
2. The Canadian Reservation reads: "Notwithstanding articles 24 and 25 of the Agreement on the Implementation of Article VII of the General Agreement on Tariffs and Trade (hereinafter referred to as the Valuation Agreement) Canada will implement the Valuation Agreement no later than January 1, 1985 provided that before that date there has been agreement under Article XXVIII of the GATT on such adjustments in Canadian tariff rates as may be needed to maintain tariff protection at the levels that would prevail were Canada not to implement the Valuation Agreement". For the provisions of Article XXVIII, see Appendix II, infra, pp. 137-9.
3. Department of Finance, Canada, Draft Amendments to the Customs Act: Value for Duty. Proposed legislation To implement the International Agreement on Customs Valuation, August, 1980 (generally denoted in this report as "the draft legislation" or "the proposed legislation"). The full text will be found in Appendix III, infra, pp. 140-60.
4. Appeal procedures with respect to an appraisal of the value for duty of any goods, are laid down in sections 46 to 50 of the Customs Act. R.S., c.58, s.1. (see Appendix IV, infra, pp. 161-6).
5. The "Tokyo Round" of multilateral trade negotiations (MTN) was substantially concluded in Geneva on April 12, 1979. These negotiations, which were launched in Tokyo in 1973, involved nearly 100 countries. Their general objective was to achieve the expansion and greater liberalization of world trade and the improvement of the international trading framework, including better rules and procedures for dealing with unfair trading practices. The negotiations focussed on both tariff and non-tariff barriers to trade, and on agricultural and fishery products as well as industrial commodities. As a result of the MTN, the rates of duty in relation to many imported goods were reduced on January 1, 1981, with further reductions phased to take place on an annual basis thereafter up to and including January 1, 1987. Implementation of the concessions on certain steel and textile goods are not scheduled to commence until

January 1, 1982, while implementation of concessions on certain chemicals are being deferred until the USA and EEC begin implementing their concessions on similar products. Should any of Canada's trading partners modify, suspend or withdraw the concessions negotiated, Canada reserves the right to do likewise.

6. Section 39 of the Customs Act reads as follows:

Where in any case or class of cases

(a) the value for duty cannot be determined under section 36 or 37 for the reason that like or similar goods are not sold in the country of export or are not sold in such country in the circumstances described in those sections,

(b) the goods imported

(i) are intended to be assembled, packaged or further manufactured in Canada or are intended to enter into the course of manufacture in Canada,

(ii) are used or obsolete goods,

(iii) are not prime quality goods as known in the trade, or are known in the trade as remnants, close-outs or discontinued lines or are surplus goods,

(iv) constitute a job lot, or

(v) are intended to be used directly in the process of manufacture or production of goods and like goods are not sold in the country of export,

(c) like goods are leased but not sold in the country of export, or

(d) the Minister is of opinion that by reason of unusual circumstances the application of sections 36 and 37 is impracticable,

the value for duty shall be determined in such manner as the Minister prescribes.

1958, c. 26, s. 1.

7. Department of Finance, Canada, Proposals on Import Policy. A discussion paper proposing changes to Canadian import legislation, July, 1980.

8. The use of ministerial prescriptions is authorized under sections 39 and 40 of the Customs Act. The provisions of section 39 are set out in n.6 (above). Section 40 reads:

Where sufficient information has not been furnished or is not available to enable

the determination of cost of production, gross profit or fair market value under section 36 or 37, the cost of production, gross profit or fair market value, as the case may be, shall be determined in such manner as the Minister prescribes. 1958,c.26,s.1.

9. Subsequently, the hearing in Vancouver was cancelled on account of the small number of anticipated participants.
10. See infra, p. 89, n. 5.
11. For further on the American Selling Price System, see infra, p. 11.
12. See Tariff Board Reports, Vols. 1 and 2, passim. Among the more noteworthy cases respecting valuation to come before the Tariff Board during this period were:

Appeal No. 295. November 6, 1953.
Appellant: Rexair of Canada Limited. Value for duty of vacuum cleaners. Interpretation of "such or the like" in section 35 of Customs Act.

Appeal No. 302. March 1, 1955.
Appellant: Tooke Bros. Limited. Duty of appraiser to inform importer as to basis of valuation.

Appeal No. 370. February 21, 1956.
Appellant: The Hallicrafters Company Limited. Interpretation of section 35 of Customs Act.

Appeal No. 401. June 27, 1957.
Appellant: Canada Iron Foundries Limited. Interpretation of section 35 of Customs Act. Determination of "fair market value" where prices fluctuate in home market.

This case was the subject of a further appeal to the Exchequer Court of Canada on June 10, 1958, with Semet-Solvay Company Limited as the appellant and Kaiser Steel Corporation as one of the respondents.

Appeal No. 406. August 12, 1957.
Appellant: Canadian Admiral Corporation. Interpretation of "fully competitive conditions" and "comparable conditions of sale" in section 35 of Customs Act.

This case was the subject of a further appeal to the Exchequer Court of Canada on

May 27, 1958, with the Canadian Electrical Manufacturers Association as one of the respondents; subsequently, on November 2, 1959, a ruling was sought from the Supreme Court of Canada.

Appeal No. 435. July 7, 1958. Appellant: Dominion Bridge Co. Limited. Reduction from list price in home market to meet competition and equalize trade.

Appeal Nos. 459 and 460. May 21, 1958. Reference to the Tariff Board by the Deputy Minister of National Revenue for Customs and Excise, pursuant to section 46 of the Customs Act, as to the value for duty of photographic films and papers. Interpretation of "like quantities" and "fully competitive conditions" in section 35(3) of Customs Act.

13. Infra, p. 16.

14. Tariff Board, Reference No. 159: Customs Valuation. Official Report of Proceedings, December 10-11, 1980 (subsequently referred to as Transcript), Vol. I, pp. 135-6.

15. See Appendix IV, infra, pp. 161-6.

16. Since its inception the Board has received 22 references from the Deputy Minister of National Revenue. Of these, only three have been on the issue of value for duty. The last such reference, heard as Appeal No. 1025 in April, 1974, asked for the Board's opinion on the fair market value of roller bearings imported from Japan. The Board's conclusions dealt with levels of trade in Canada and Japan and with the subject of "like goods" within the meaning of section 36 of the Customs Act (see Tariff Board Reports, Vol. 5, pp. 458-499). The two other references from the Deputy Minister on the subject of value for duty were heard as Appeal Nos. 459 and 460. For details, see ibid, Vol. 2, pp. 142-7; n.12 (above).

17. Tariff Board Reports, passim. A further 144 appeals respecting value for duty were submitted to the Board but did not reach the hearing stage. In all, slightly over one-fifth of the appeals received by the Board during the period specified were concerned with customs valuation. The value-for-duty appeals, as here represented, do not include anti-dumping cases, of which 15 were heard by the Board during the period July 1933 - December 1980, of 32 received.

CHAPTER II. THE INTERNATIONAL FRAMEWORK

1. For the full provisions of Article VII, see Appendix VI, infra, pp. 172-4.
2. Customs Co-operation Council, Explanatory Notes to the Brussels Definition of Value, Brussels, 1971, passim.
3. Notably, before the change in the basis of valuation, knit wool gloves and glove linings, certain types of plastic or rubber footwear, and canned clams. See Trade Agreements Act of 1979. Statements of Administrative Action, 96th Congress, 1st Session. House Document No. 96-153, Part II, Washington, 1979, pp. 160-95.
4. Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade and Protocol, Geneva, 1979. Introduction.
5. See infra, pp. 98-100.
6. See infra, pp. 97-8, 116.
7. See infra, p. 105.
8. For the full definition of "related persons", see infra, p. 107.
9. See infra, p. 99.
10. See infra, pp. 99-100.
11. See infra, p. 100.
12. See infra, p. 107.
13. See infra, p. 101.
14. See infra, p. 107.
15. See infra, p. 101.
16. See infra, pp. 101-2, 121.
17. These various adjustment elements are set out diagrammatically in Diagram 2, infra, p. 51.
18. See infra, pp. 102-3.
19. Note to Article 6, infra, p. 123.
20. See infra, p. 103.
21. See infra, pp. 103-4, 125.
22. The Board understands that this has been the usual basis for the Canadian valuation of goods from state-controlled economies.
23. See infra, pp. 97, 99, 105-6, 108.
24. See infra, p. 106.
25. See infra, pp. 105-6.
26. See infra, pp. 111-12, 134-6.
27. See infra, pp. 108-11, 129-33.
28. See infra, pp. 111-12, 134-6.
29. Transcript, pp. 8-13.

CHAPTER III. SUBMISSIONS TO THE BOARD

1. Six submissions were reinforced by supplementary briefs in response to the appraisal of evidence prepared by the Board's staff. A full listing of the parties making representations will be found in Appendix V, infra, pp. 167-71.
2. The following organizations are indicated as subscribing to the submission made on behalf of the Canadian Apparel Manufacturers Institute: Alberta Apparel Manufacturers Institute; Apparel Manufacturers Association of Ontario; Apparel Manufacturers Institute of Quebec; B.C. Fashion and Needle Trade Association; Manitoba Fashion Institute; Childrens Apparel Manufacturers Association; Canadian Shirt Manufacturers Association; Mens Clothing Manufacturers Association of Quebec; Quebec Outerwear Knitters Association; and Society of the Button Industry.
3. The member companies of the Home Furnishing Industries Association are listed as: Commonwealth Curtain Corp., Montreal; Daisy Decorative Products, Toronto; Lawrence Bedspread and Novelty Ltd., Montreal; Rosedale Draperies, Montreal; and Sheftex Corp., Montreal.
4. Transcript, pp. 272-3.
5. "Normal value" is the basis laid down in the Anti-dumping Act (17 Eliz.II.,c.10,s.9) for determining whether or not goods are dumped. In most cases "normal value" is lower than "fair market value" because "normal value" reflects adjustments for trade level, quantities, etc., which "fair market value" does not. Under the proposed legislation "normal value" and "value for duty" are more likely to be approximately the same because both incorporate similar adjustments.
6. Tariff Board, Reference No. 152: Fresh and Processed Fruits and Vegetables, (1977-8).
7. Tariff Board, Reference No. 159: Customs Valuation. Official Report of Proceedings, February 9, 1981 (subsequently referred to as Transcript, Feb. 9), pp. 46-7.
8. Ibid., p. 98.
9. See section 4 of the Customs Act for the appraiser's oath of office.
10. Section 2(3) of the Customs Act states:
All the expressions and provisions of this Act,
or of any law relating to the customs, shall receive
such fair and liberal construction and interpretation

as will best ensure the protection of the revenue and the attainment of the purpose for which this Act or such law was made, according to its true intent, meaning and spirit.

11. Combines Investigation Act (23-24 Eliz. II., c.76).

CHAPTER IV. CONFORMITY OF THE PROPOSED LEGISLATION TO THE CODE

1. From Professor J.P. Lacasse, Faculty of Law, University of Ottawa.
2. In this connection specific mention should be made of Mr. H. J. Chumas, Chief Advisor of the Customs Union Service of the European Economic Commission.
3. See infra, p. 145.
4. See infra, pp. 107-8.
5. Supra, pp. 33-4.
6. See infra, pp. 97, 104, 108.
7. See infra, p. 144.
8. See infra, p. 103.
9. See infra, p. 106.
10. Section 16(4) of the Anti-dumping Act states that:

The Tribunal, in considering any question relating to the production in Canada of any goods or the establishment in Canada of such production, shall take fully into account the provisions of paragraph 4(a) of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade signed at Geneva, Switzerland, on June 30, 1967.
11. Section 18 of the Customs Tariff is worded as follows:
 - (1) The Governor in Council, on the recommendation of the Minister [of Finance], may from time to time by regulation prescribe rules for, and explanatory notes to assist in resolving conflicts or doubts respecting, the interpretation of the several descriptions of goods in Group XII of Schedule A, set forth under the group designation "Products of the Chemical, Plastics and Allied Industries".
 - (2) In the formulation of the rules and explanatory notes to be prescribed by the Governor in Council pursuant to subsection (1), the Governor in Council shall be guided, as nearly as may be, by the Nomenclature

for the Classification of Goods in Customs Tariffs published by the Customs Co-operation Council in Brussels (commonly known as the "Brussels Nomenclature"), including the rules for the interpretation of the said Nomenclature, the section and chapter notes and the headings, and the Explanatory Notes to the Brussels Nomenclature published by the Council, as amended from time to time.

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| 12. See <u>infra</u> , pp. 142-3. | 13. See <u>infra</u> , p. 104. |
| 14. See <u>infra</u> , p. 146. | 15. See <u>infra</u> , p. 140. |
| 16. See <u>infra</u> , p. 141. | 17. <u>Supra</u> , p. 39. |
| 18. See <u>infra</u> , p. 142. | 19. See <u>infra</u> , p. 142. |
| 20. See <u>infra</u> , p. 146. | 21. See <u>infra</u> , p. 145. |
| 22. See <u>infra</u> , p. 144. | 23. See <u>infra</u> , p. 151. |
| 24. See <u>infra</u> , p. 157. | 25. See <u>infra</u> , p. 159. |

CHAPTER V. PROBLEMS OF CLARITY IN RELATION TO THE PROPOSED LEGISLATION

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| 1. See <u>infra</u> , pp. 144-5. | 2. See <u>infra</u> , pp. 146-7. |
| 3. See <u>infra</u> , p. 123. | 4. See <u>infra</u> , pp. 154-5. |
| 5. See <u>infra</u> , p. 105. | 6. See <u>infra</u> , p. 147. |
| 7. See <u>supra</u> , p. 7. | |
| 8. See <u>supra</u> , pp. 7-8; <u>infra</u> , p. 55. | |
| 9. See <u>supra</u> , pp. 6, 17. | 10. See Diagram 2, <u>supra</u> , p. 51. |
| 11. <u>Supra</u> , pp. 53-4. | |
| 12. The subject of the treatment of air freight costs for customs valuation purposes is dealt with in European Economic Commission, <u>Commission Regulations</u> , No. 1033/77, 17 May, 1977. | |
| 13. Treasury Department, U.S. Customs Service, Customs Information Exchange, <u>C.I.E. 38/80</u> , August 12, 1980. | |

14. See infra, p. 141. 15. See infra, p. 152.
16. Introduced as Bill C-44 on April 6, 1978, only to die on the Order Paper.
17. See infra, pp. 148-9, 150.
18. Tariff Board Act. R.S.c.261,s.1.
19. See infra, pp. 145-6, 150, 154, 157, 159, 160.
20. Thus, in Articles 2.1(b) and 3.1(b) of the Code, reference is made to adjustments "made on the basis of demonstrated evidence which clearly establishes the reasonableness and accuracy of the adjustment, whether the adjustment leads to an increase or decrease in the value".
21. See infra, pp. 159, 160. 22. Supra, p. 31.
23. See note 16, above.
24. Canada Gazette, Part II, Vol. 112, No. 3, 8/2/78, pp. 498-9.
25. See infra, p. 152.
26. Agreement on Implementation of Article VI (Anti-Dumping Code), Geneva, 1969, revised in Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade, Geneva, 1979; Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade, Geneva, 1979.
27. Under subsection 13(1) of the Anti-dumping Act:
The Deputy Minister shall forthwith cause an investigation to be initiated respecting the dumping of any goods, on his own initiative or on receipt of a complaint in writing by or on behalf of producers in Canada of like goods, if
(a) he is of the opinion that there is evidence that the goods have been or are being dumped; and
(b) either
 (i) he is of the opinion that there is evidence, or
 (ii) the Tribunal advises that it is of the opinion that there is evidence,
that the dumping referred to in paragraph (a) has caused, is causing or is likely to cause material injury to the production in Canada of like goods or has materially retarded or is materially retarding the establishment of the production in Canada of like goods.

A similar provision is contained in subsection 16(1) of the proposed Special Import Measures Act (see Proposals on Import Policy, p. 45).

28. See supra, p. 7; infra, p. 125.

29. Section 11 of the Anti-dumping Act reads:

Where, in the opinion of the Deputy Minister, sufficient information has not been furnished or is not available to enable the determination of normal value or export price under section 9 or 10, the normal value or export price, as the case may be, shall be determined in such manner as the Minister prescribes.

CHAPTER VI. REVIEW, REAPPRAISAL AND APPEAL PROCEDURES

1. For the full text of the pertinent legislative provisions, see Appendix IV, infra, pp. 161-6.
2. Supra, pp. 60-1.
3. Administrative interpretations and intentions with respect to the implementation of the new system of customs valuation in the United States are set out in Trade Agreements Act of 1979. Statements of Administrative Action, 96th Congress, 1st Session. House Document No. 96-153, Part II, Washington, 1979.
4. In this regard the Board notes that the draft version of the Customs Act (in Bill C-44) provides that reappraisals should be carried out "with all due dispatch".
5. See supra, p. 9.
6. See note 16 to Chapter 1, infra, p. 87.

APPENDIX I

AGREEMENT ON IMPLEMENTATION
OF ARTICLE VII
OF THE GENERAL AGREEMENT
ON TARIFFS AND TRADE

GENERAL INTRODUCTORY COMMENTARY

1. The primary basis for customs value under this Agreement is “ transaction value ” as defined in Article 1. Article 1 is to be read together with Article 8 which provides, *inter alia*, for adjustments to the price actually paid or payable in cases where certain specific elements which are considered to form a part of the value for customs purposes are incurred by the buyer but are not included in the price actually paid or payable for the imported goods. Article 8 also provides for the inclusion in the transaction value of certain considerations which may pass from the buyer to the seller in the form of specified goods or services rather than in the form of money. Articles 2 to 7, inclusive, provide methods of determining the customs value whenever it cannot be determined under the provisions of Article 1.

2. Where the customs value cannot be determined under the provisions of Article 1 there should normally be a process of consultation between the customs administration and importer with a view to arriving at a basis of value under the provisions of Articles 2 or 3. It may occur, for example, that the importer has information about the customs value of identical or similar imported goods which is not immediately available to the customs administration in the port of importation. On the other hand, the customs administration may have information about the customs value of identical or similar imported goods which is not readily available to the importer. A process of consultation between the two parties will enable information to be exchanged, subject to the requirements of commercial confidentiality, with a view to determining a proper basis of value for customs purposes.

3. Articles 5 and 6 provide two bases for determining the customs value where it cannot be determined on the basis of the transaction value of the imported goods or of identical or similar imported goods. Under Article 5.1 the customs value is determined on the basis of the price at which the goods are sold in the condition as imported to an unrelated buyer in the country of importation. The importer also has the right to have goods which are further processed after importation valued under the provisions of Article 5 if he so requests. Under Article 6 the customs value is determined on the basis of the computed value. Both these methods present certain difficulties

and because of this the importer is given the right, under the provisions of Article 4, to choose the order of application of the two methods.

4. Article 7 sets out how to determine the customs value in cases where it cannot be determined under the provisions of any of the preceding Articles.

PREAMBLE

Having regard to the Multilateral Trade Negotiations, the Parties to this Agreement (hereinafter referred to as “ Parties ”),

Desiring to further the objectives of the General Agreement on Tariffs and Trade (hereinafter referred to as “ General Agreement ” or “ GATT ”) and to secure additional benefits for the international trade of developing countries;

Recognizing the importance of the provisions of Article VII of the General Agreement and desiring to elaborate rules for their application in order to provide greater uniformity and certainty in their implementation;

Recognizing the need for a fair, uniform and neutral system for the valuation of goods for customs purposes that precludes the use of arbitrary or fictitious customs values;

Recognizing that the basis for valuation of goods for customs purposes should, to the greatest extent possible, be the transaction value of the goods being valued;

Recognizing that customs value should be based on simple and equitable criteria consistent with commercial practices and that valuation procedures should be of general application without distinction between sources of supply;

Recognizing that valuation procedures should not be used to combat dumping;

Hereby agree as follows:

PART I

RULES ON CUSTOMS VALUATION

Article 1

1. The customs value of imported goods shall be the transaction value, that is the price actually paid or payable for the goods when sold for export to the country of importation adjusted in accordance with the provisions of Article 8, provided:

- (a) that there are no restrictions as to the disposition or use of the goods by the buyer other than restrictions which:
 - (i) are imposed or required by law or by the public authorities in the country of importation;
 - (ii) limit the geographical area in which the goods may be resold;
or
 - (iii) do not substantially affect the value of the goods;
 - (b) that the sale or price is not subject to some condition or consideration for which a value cannot be determined with respect to the goods being valued;
 - (c) that no part of the proceeds of any subsequent resale, disposal or use of the goods by the buyer will accrue directly or indirectly to the seller, unless an appropriate adjustment can be made in accordance with the provisions of Article 8; and
 - (d) that the buyer and seller are not related, or where the buyer and seller are related, that the transaction value is acceptable for customs purposes under the provisions of paragraph 2 of this Article.
2. (a) In determining whether the transaction value is acceptable for the purposes of paragraph 1, the fact that the buyer and the seller are related within the meaning of Article 15 shall not in itself be grounds for regarding the transaction value as unacceptable. In such case the circumstances surrounding the sale shall be examined and the transaction value shall be accepted provided that the relationship did not influence the price. If, in the light of information provided by the importer or otherwise, the customs administration has grounds for considering that the relationship influenced the price, it shall communicate its grounds to the importer and he shall be given a reasonable opportunity to respond. If the importer so requests, the communication of the grounds shall be in writing.
- (b) In a sale between related persons, the transaction value shall be accepted and the goods valued in accordance with the provisions of paragraph 1 whenever the importer demonstrates that such value closely approximates to one of the following occurring at or about the same time:
- (i) the transaction value in sales to unrelated buyers of identical or similar goods for export to the same country of importation;
 - (ii) the customs value of identical or similar goods as determined under the provisions of Article 5;
 - (iii) the customs value of identical or similar goods as determined under the provisions of Article 6;

- (iv) the transaction value in sales to unrelated buyers for export to the same country of importation of goods which would be identical to the imported goods except for having a different country of production provided that the sellers in any two transactions being compared are not related.

In applying the foregoing tests, due account shall be taken of demonstrated differences in commercial levels, quantity levels, the elements enumerated in Article 8 and costs incurred by the seller in sales in which he and the buyer are not related that are not incurred by the seller in sales in which he and the buyer are related.

- (c) The tests set forth in paragraph 2(b) are to be used at the initiative of the importer and only for comparison purposes. Substitute values may not be established under the provisions of paragraph 2(b).

Article 2

1. (a) If the customs value of the imported goods cannot be determined under the provisions of Article 1, the customs value shall be the transaction value of identical goods sold for export to the same country of importation and exported at or about the same time as the goods being valued.

(b) In applying this Article, the transaction value of identical goods in a sale at the same commercial level and in substantially the same quantity as the goods being valued shall be used to determine the customs value. Where no such sale is found, the transaction value of identical goods sold at a different commercial level and/or in different quantities, adjusted to take account of differences attributable to commercial level and/or to quantity, shall be used, provided that such adjustments can be made on the basis of demonstrated evidence which clearly establishes the reasonableness and accuracy of the adjustment, whether the adjustment leads to an increase or a decrease in the value.
2. Where the costs and charges referred to in Article 8.2 are included in the transaction value, an adjustment shall be made to take account of significant differences in such costs and charges between the imported goods and the identical goods in question arising from differences in distances and modes of transport.
3. If, in applying this Article, more than one transaction value of identical goods is found, the lowest such value shall be used to determine the customs value of the imported goods.

Article 3

1. (a) If the customs value of the imported goods cannot be determined under the provisions of Articles 1 and 2, the customs value shall be the transaction value of similar goods sold for export to the same country of importation and exported at or about the same time as the goods being valued.

(b) In applying this Article, the transaction value of similar goods in a sale at the same commercial level and in substantially the same quantity as the goods being valued shall be used to determine the customs value. Where no such sale is found, the transaction value of similar goods sold at a different commercial level and/or in different quantities, adjusted to take account of differences attributable to commercial level and/or to quantity, shall be used, provided that such adjustments can be made on the basis of demonstrated evidence which clearly establishes the reasonableness and accuracy of the adjustment, whether the adjustment leads to an increase or a decrease in the value.
2. Where the costs and charges referred to in Article 8.2 are included in the transaction value, an adjustment shall be made to take account of significant differences in such costs and charges between the imported goods and the similar goods in question arising from differences in distances and modes of transport.
3. If, in applying this Article, more than one transaction value of similar goods is found, the lowest such value shall be used to determine the customs value of the imported goods.

Article 4

If the customs value of the imported goods cannot be determined under the provisions of Articles 1, 2 and 3 the customs value shall be determined under the provisions of Article 5 or, when the customs value cannot be determined under that Article, under the provisions of Article 6 except that, at the request of the importer, the order of application of Articles 5 and 6 shall be reversed.

Article 5

1. (a) If the imported goods or identical or similar imported goods are sold in the country of importation in the condition as imported, the customs value of the imported goods under the provisions of

this Article shall be based on the unit price at which the imported goods or identical or similar imported goods are so sold in the greatest aggregate quantity, at or about the time of the importation of the goods being valued, to persons who are not related to the persons from whom they buy such goods, subject to deductions for the following:

- (i) either the commissions usually paid or agreed to be paid or the additions usually made for profit and general expenses in connexion with sales in such country of imported goods of the same class or kind;
 - (ii) the usual costs of transport and insurance and associated costs incurred within the country of importation;
 - (iii) where appropriate, the costs and charges referred to in Article 8.2; and
 - (iv) the customs duties and other national taxes payable in the country of importation by reason of the importation or sale of the goods.
- (b) If neither the imported goods nor identical nor similar imported goods are sold at or about the time of importation of the goods being valued, the customs value shall, subject otherwise to the provisions of paragraph 1 (a) of this Article, be based on the unit price at which the imported goods or identical or similar imported goods are sold in the country of importation in the condition as imported at the earliest date after the importation of the goods being valued but before the expiration of ninety days after such importation.

2. If neither the imported goods nor identical nor similar imported goods are sold in the country of importation in the condition as imported, then, if the importer so requests, the customs value shall be based on the unit price at which the imported goods, after further processing, are sold in the greatest aggregate quantity to persons in the country of importation who are not related to the persons from whom they buy such goods, due allowance being made for the value added by such processing and the deductions provided for in paragraph 1(a) of this Article.

Article 6

1. The customs value of imported goods under the provisions of this Article shall be based on a computed value. Computed value shall consist of the sum of:

- (a) the cost or value of materials and fabrication or other processing employed in producing the imported goods;
- (b) an amount for profit and general expenses equal to that usually reflected in sales of goods of the same class or kind as the goods being valued which are made by producers in the country of exportation for export to the country of importation;
- (c) the cost or value of all other expenses necessary to reflect the valuation option chosen by the Party under Article 8.2.

2. No Party may require or compel any person not resident in its own territory to produce for examination, or to allow access to, any account or other record for the purposes of determining a computed value. However, information supplied by the producer of the goods for the purposes of determining the customs value under the provisions of this Article may be verified in another country by the authorities of the country of importation with the agreement of the producer and provided they give sufficient advance notice to the government of the country in question and the latter does not object to the investigation.

Article 7

1. If the customs value of the imported goods cannot be determined under the provisions of Articles 1 to 6, inclusive, the customs value shall be determined using reasonable means consistent with the principles and general provisions of this Agreement and of Article VII of the General Agreement and on the basis of data available in the country of importation.

2. No customs value shall be determined under the provisions of this Article on the basis of:

- (a) the selling price in the country of importation of goods produced in such country;
- (b) a system which provides for the acceptance for customs purposes of the higher of two alternative values;
- (c) the price of goods on the domestic market of the country of exportation;
- (d) the cost of production other than computed values which have been determined for identical or similar goods in accordance with the provisions of Article 6;
- (e) the price of the goods for export to a country other than the country of importation;
- (f) minimum customs values; or

(g) arbitrary or fictitious values.

3. If he so requests, the importer shall be informed in writing of the customs value determined under the provisions of this Article and the method used to determine such value.

Article 8

1. In determining the customs value under the provisions of Article 1, there shall be added to the price actually paid or payable for the imported goods:

- (a) the following, to the extent that they are incurred by the buyer but are not included in the price actually paid or payable for the goods:
 - (i) commissions and brokerage, except buying commissions;
 - (ii) the cost of containers which are treated as being one for customs purposes with the goods in question;
 - (iii) the cost of packing whether for labour or materials;
- (b) the value, apportioned as appropriate, of the following goods and services where supplied directly or indirectly by the buyer free of charge or at reduced cost for use in connexion with the production and sale for export of the imported goods, to the extent that such value has not been included in the price actually paid or payable:
 - (i) materials, components, parts and similar items incorporated in the imported goods;
 - (ii) tools, dies, moulds and similar items used in the production of the imported goods;
 - (iii) materials consumed in the production of the imported goods;
 - (iv) engineering, development, artwork, design work, and plans and sketches undertaken elsewhere than in the country of importation and necessary for the production of the imported goods;
- (c) royalties and licence fees related to the goods being valued that the buyer must pay, either directly or indirectly, as a condition of sale of the goods being valued, to the extent that such royalties and fees are not included in the price actually paid or payable;
- (d) the value of any part of the proceeds of any subsequent resale, disposal or use of the imported goods that accrues directly or indirectly to the seller.

2. In framing its legislation, each Party shall provide for the inclusion in or the exclusion from the customs value, in whole or in part, of the following:

- (a) the cost of transport of the imported goods to the port or place of importation;
- (b) loading, unloading and handling charges associated with the transport of the imported goods to the port or place of importation; and
- (c) the cost of insurance.

3. Additions to the price actually paid or payable shall be made under this Article only on the basis of objective and quantifiable data.

4. No additions shall be made to the price actually paid or payable in determining the customs value except as provided in this Article.

Article 9

1. Where the conversion of currency is necessary for the determination of the customs value, the rate of exchange to be used shall be that duly published by the competent authorities of the country of importation concerned and shall reflect as effectively as possible, in respect of the period covered by each such document of publication, the current value of such currency in commercial transactions in terms of the currency of the country of importation.

2. The conversion rate to be used shall be that in effect at the time of exportation or the time of importation, as provided by each Party.

Article 10

All information which is by nature confidential or which is provided on a confidential basis for the purposes of customs valuation shall be treated as strictly confidential by the authorities concerned who shall not disclose it without the specific permission of the person or government providing such information, except to the extent that it may be required to be disclosed in the context of judicial proceedings.

Article 11

1. The legislation of each Party shall provide in regard to a determination of customs value for the right of appeal, without penalty, by the importer or any other person liable for the payment of the duty.

2. An initial right of appeal without penalty may be to an authority within the customs administration or to an independent body, but the legislation of each Party shall provide for the right of appeal without penalty to a judicial authority.

3. Notice of the decision on appeal shall be given to the appellant and the reasons for such decision shall be provided in writing. He shall also be informed of his rights of any further appeal.

Article 12

Laws, regulations, judicial decisions and administrative rulings of general application giving effect to this Agreement shall be published in conformity with Article X of the General Agreement by the country of importation concerned.

Article 13

If, in the course of determining the customs value of imported goods, it becomes necessary to delay the final determination of such customs value, the importer shall nevertheless be able to withdraw his goods from customs if, where so required, he provides sufficient guarantee in the form of a surety, a deposit or some other appropriate instrument, covering the ultimate payment of customs duties for which the goods may be liable. The legislation of each Party shall make provisions for such circumstances.

Article 14

The notes at Annex I to this Agreement form an integral part of this Agreement and the Articles of this Agreement are to be read and applied in conjunction with their respective notes. Annexes II and III also form an integral part of this Agreement.

Article 15

1. In this Agreement:

- (a) "customs value of imported goods" means the value of goods for the purposes of levying ad valorem duties of customs on imported goods;
- (b) "country of importation" means country or customs territory of importation; and
- (c) "produced" includes grown, manufactured and mined.

2. (a) In this Agreement “identical goods” means goods which are the same in all respects, including physical characteristics, quality and reputation. Minor differences in appearance would not preclude goods otherwise conforming to the definition from being regarded as identical.
 - (b) In this Agreement “similar goods” means goods which, although not alike in all respects, have like characteristics and like component materials which enable them to perform the same functions and to be commercially interchangeable. The quality of the goods, their reputation and the existence of a trademark are among the factors to be considered in determining whether goods are similar.
 - (c) The terms “identical goods” and “similar goods” do not include, as the case may be, goods which incorporate or reflect engineering, development, artwork, design work, and plans and sketches for which no adjustment has been made under Article 8.1(b)(iv) because such elements were undertaken in the country of importation.
 - (d) Goods shall not be regarded as “identical goods” or “similar goods” unless they were produced in the same country as the goods being valued.
 - (e) Goods produced by a different person shall be taken into account only when there are no identical goods or similar goods, as the case may be, produced by the same person as the goods being valued.
3. In this Agreement “goods of the same class or kind” means goods which fall within a group or range of goods produced by a particular industry or industry sector, and includes identical or similar goods.
4. For the purposes of this Agreement, persons shall be deemed to be related only if:
 - (a) they are officers or directors of one another’s businesses;
 - (b) they are legally recognized partners in business;
 - (c) they are employer and employee;
 - (d) any person directly or indirectly owns, controls or holds 5 per cent or more of the outstanding voting stock or shares of both of them;
 - (e) one of them directly or indirectly controls the other;
 - (f) both of them are directly or indirectly controlled by a third person;
 - (g) together they directly or indirectly control a third person; or
 - (h) they are members of the same family.

5. Persons who are associated in business with one another in that one is the sole agent, sole distributor or sole concessionaire, however described, of the other shall be deemed to be related for the purposes of this Agreement if they fall within the criteria of paragraph 4 of this Article.

Article 16

Upon written request, the importer shall have the right to an explanation in writing from the customs administration of the country of importation as to how the customs value of his imported goods was determined.

Article 17

Nothing in this Agreement shall be construed as restricting or calling into question the rights of customs administrations to satisfy themselves as to the truth or accuracy of any statement, document or declaration presented for customs valuation purposes.

PART II

ADMINISTRATION, CONSULTATION AND DISPUTE SETTLEMENT

Institutions

Article 18

There shall be established under this Agreement:

1. A Committee on Customs Valuation (hereinafter referred to as the Committee) composed of representatives from each of the Parties. The Committee shall elect its own Chairman and shall normally meet once a year, or as is otherwise envisaged by the relevant provisions of this Agreement, for the purpose of affording Parties the opportunity to consult on matters relating to the administration of the customs valuation system by

any Party as it might affect the operation of this Agreement or the furtherance of its objectives and carrying out such other responsibilities as may be assigned to it by the Parties. The GATT secretariat shall act as the secretariat to the Committee.

2. A Technical Committee on Customs Valuation (hereinafter referred to as the Technical Committee) under the auspices of the Customs Cooperation Council, which shall carry out the responsibilities described in Annex II to this Agreement and shall operate in accordance with the rules of procedure contained therein.

Consultation

Article 19

1. If any Party considers that any benefit accruing to it, directly or indirectly, under this Agreement is being nullified or impaired, or that the achievement of any objective of this Agreement is being impeded, as a result of the actions of another Party or of other Parties, it may, with a view to reaching a mutually satisfactory solution of the matter, request consultations with the Party or Parties in question. Each Party shall afford reaching a mutually satisfactory solution of the matter, request consultations with the Party or Parties in question. Each Party shall afford sympathetic consideration to any request from another Party for consultations.

2. The Parties concerned shall initiate requested consultations promptly.

3. Parties engaged in consultations on a particular matter affecting the operation of this Agreement shall attempt to conclude such consultations within a reasonably short period of time. The Technical Committee shall provide, upon request, advice and assistance to Parties engaged in consultations.

Dispute settlement

Article 20

1. If no mutually satisfactory solution has been reached between the Parties concerned in consultations under Article 19 above, the Committee shall meet at the request of any party to the dispute, within thirty days of receipt of such a request, to investigate the matter, with a view to facilitating a mutually satisfactory solution.

2. In investigating the matter and in selecting its procedures, the Committee shall take into account whether the issues in dispute relate to commercial policy considerations or to questions requiring detailed technical consideration. The Committee may request on its own initiative that the Technical Committee carry out an examination, as provided in paragraph 4 below, of any question requiring technical consideration. Upon the request of any party to the dispute that considers the issues to relate to questions of a technical nature, the Committee shall request the Technical Committee to carry out such an examination.

3. During any phase of a dispute settlement procedure, competent bodies and experts in matters under consideration may be consulted; appropriate information and assistance may be requested from such bodies and experts. The Committee shall take into consideration the results of any work of the Technical Committee that pertain to the matter in dispute.

Technical issues

4. When the Technical Committee is requested under the provisions of paragraph 2 above, it shall examine the matter and report to the Committee no later than three months from the date the technical issue was referred to it, unless the period is extended by mutual agreement between the parties to the dispute.

Panel proceedings

5. In cases where the matter is not referred to the Technical Committee, the Committee shall establish a panel upon the request of any party to the dispute if no mutually satisfactory solution has been reached within three months from the date of the request to the Committee to investigate the matter. Where the matter is referred to the Technical Committee, the Committee shall establish a panel upon the request of any party to the dispute if no mutually satisfactory solution has been reached within one month from the date when the Technical Committee presents its report to the Committee.

6. (a) When a panel is established, it shall be governed by the procedures as set forth in Annex III.

(b) If the Technical Committee has made a report on the technical aspects of the matter in dispute, the panel shall use this report as the basis for its consideration of the technical aspects of the matter in dispute.

Enforcement

7. After the investigation is completed or after the report of the Technical Committee or panel is presented to the Committee, the Committee shall

give the matter prompt consideration. With respect to panel reports, the Committee shall take appropriate action normally within thirty days of receipt of the report. Such action shall include:

- (i) a statement concerning the facts of the matter; and
- (ii) recommendations to one or more Parties or any other ruling which it deems appropriate.

8. If a Party to which recommendations are addressed considers itself unable to implement them, it should promptly furnish reasons in writing to the Committee. In that event, the Committee shall consider what further action may be appropriate.

9. If the Committee considers that the circumstances are serious enough to justify such action, it may authorize one or more Parties to suspend the application to any other Party or Parties of such obligations under this Agreement as it determines to be appropriate in the circumstances.

10. The Committee shall keep under surveillance any matter on which it has made recommendations or given rulings.

11. If a dispute arises between Parties relating to rights and obligations under this Agreement, Parties should complete the dispute settlement procedures under this Agreement before availing themselves of any rights which they have under the GATT, including invoking Article XXIII thereof.

PART III

SPECIAL AND DIFFERENTIAL TREATMENT

Article 21

1. Developing country Parties may delay application of its provisions for a period not exceeding five years from the date of entry into force of this Agreement for such countries. Developing country Parties who choose to delay application of this Agreement shall notify the Director-General to the CONTRACTING PARTIES to the GATT accordingly.

2. In addition to paragraph 1 above, developing country Parties may delay application of Article 1.2(b)(iii) and Article 6 for a period not exceeding

three years following their application of all other provisions of this Agreement. Developing country Parties that choose to delay application of the provisions specified in this paragraph shall notify the Director-General to the CONTRACTING PARTIES to the GATT accordingly.

3. Developed country Parties shall furnish, on mutually agreed terms, technical assistance to developing country Parties that so request. On this basis developed country Parties shall draw up programmes of technical assistance which may include, *inter alia*, training of personnel, assistance in preparing implementation measures, access to sources of information regarding customs valuation methodology, and advice on the application of the provisions of this Agreement.

PART IV

FINAL PROVISIONS

Acceptance and accession

Article 22

1. This Agreement shall be open for acceptance by signature or otherwise by governments contracting parties to the GATT and by the European Economic Community.
2. This Agreement shall be open for acceptance by signature or otherwise by governments having provisionally acceded to the GATT, on terms related to the effective application of rights and obligations under this Agreement, which take into account rights and obligations in the instruments providing for their provisional accession.
3. This Agreement shall be open to accession by any other government on terms, related to the effective application of rights and obligations under this Agreement, to be agreed between that government and the Parties, by the deposit with the Director-General to the CONTRACTING PARTIES to the GATT of an instrument of accession which states the terms so agreed.
4. In regard to acceptance, the provisions of Article XXVI:5(a) and (b) of the General Agreement would be applicable.

Reservations

Article 23

Reservations may not be entered in respect of any of the provisions of this Agreement without the consent of the other Parties.

Entry into force

Article 24

This Agreement shall enter into force on 1 January 1981 for the governments * which have accepted or acceded to it by that date. For each other government it shall enter into force on the thirtieth day following the date of its acceptance or accession to this Agreement.

National legislation

Article 25

1. Each government accepting or acceding to this Agreement shall ensure, not later than the date of entry into force of this Agreement for it, the conformity of its laws, regulations and administrative procedures with the provisions of this Agreement.
2. Each Party shall inform the Committee of any changes in its laws and regulations relevant to this Agreement and in the administration of such laws and regulations.

Review

Article 26

The Committee shall review annually the implementation and operation of this Agreement taking into account the objectives thereof. The Committee shall annually inform the CONTRACTING PARTIES to the GATT of developments during the period covered by such reviews.

* The term "governments" is deemed to include the competent authorities of the European Economic Community.

Article 27

The Parties may amend this Agreement, having regard, *inter alia*, to the experience gained in its implementation. Such an amendment, once the Parties have concurred in accordance with procedures established by the Committee, shall not come into force for any Party until it has been accepted by such Party.

Withdrawal

Article 28

Any Party may withdraw from this Agreement. The withdrawal shall take effect upon the expiration of sixty days from the date on which written notice of withdrawal is received by the Director General to the CONTRACTING PARTIES to the GATT. Any Party may, upon the receipt of such notice, request an immediate meeting of the Committee.

Secretariat

Article 29

This Agreement shall be serviced by the GATT secretariat except in regard to those responsibilities specifically assigned to the Technical Committee, which will be serviced by the secretariat of the Customs Co-operation Council.

Deposit

Article 30

This Agreement shall be deposited with the Director-General to the CONTRACTING PARTIES to the GATT, who shall promptly furnish to each Party and each contracting party to the GATT a certified copy thereof and of each amendment thereto pursuant to Article 27, and a notification of each acceptance thereof or accession thereto pursuant to Article 22 and of each withdrawal therefrom pursuant to Article 28.

Registration

Article 31

This Agreement shall be registered in accordance with the provisions of Article 102 of the Charter of the United Nations.

Done at Geneva this twelfth day of April nineteen hundred and seventy-nine in a single copy, in the English, French and Spanish languages, each text being authentic.

ANNEX I

INTERPRETATIVE NOTES

General Note

Sequential application of valuation methods

1. Articles 1 to 7, inclusive, define how the customs value of imported goods is to be determined under the provisions of this Agreement. The methods of valuation are set out in a sequential order of application. The primary method for customs valuation is defined in Article 1 and imported goods are to be valued in accordance with the provisions of this Article whenever the conditions prescribed therein are fulfilled.

2. Where the customs value cannot be determined under the provisions of Article 1, it is to be determined by proceeding sequentially through the succeeding Articles to the first such Article under which the customs value can be determined. Except as provided in Article 4, it is only when the customs value cannot be determined under the provisions of a particular Article that the provisions of the next Article in the sequence can be used.

3. If the importer does not request that the order of Articles 5 and 6 be reversed, the normal order of the sequence is to be followed. If the importer does so request but it then proves impossible to determine the customs value under the provisions of Article 6, the customs value is to be determined under the provisions of Article 5, if it can be so determined.

4. Where the customs value cannot be determined under the provisions of Articles 1 to 6, inclusive, it is to be determined under the provisions of Article 7.

Use of generally accepted accounting principles

1. "Generally accepted accounting principles" refers to the recognized consensus or substantial authoritative support within a country at a particular time as to which economic resources and obligations should be recorded as assets and liabilities, which changes in assets and liabilities should be recorded, how the assets and liabilities and changes in them should be measured, what information should be disclosed and how it should be disclosed, and which financial statements should be prepared. These standards may be broad guidelines of general application as well as detailed practices and procedures.

2. For the purposes of this Agreement, the customs administration of each party shall utilize information prepared in a manner consistent with generally accepted accounting principles in the country which is appropriate for the Article in question. For example, the determination of usual profit and general expenses under the provisions of Article 5 would be carried out utilizing information prepared in a manner consistent with generally accepted accounting principles of

the country of importation. On the other hand, the determination of usual profit and general expenses under the provisions of Article 6 would be carried out utilizing information prepared in a manner consistent with generally accepted accounting principles of the country of production. As a further example, the determination of an element provided for in Article 8.1 (b) (ii) undertaken in the country of importation would be carried out utilizing information in a manner consistent with the generally accepted accounting principles of that country.

Note to Article 1

Price actually paid or payable

The price actually paid or payable is the total payment made or to be made by the buyer to or for the benefit of the seller for the imported goods. The payment need not necessarily take the form of a transfer of money. Payment may be made by way of letters of credit or negotiable instruments. Payment may be made directly or indirectly. An example of an indirect payment would be the settlement by the buyer, whether in whole or in part, of a debt owed by the seller.

Activities undertaken by the buyer on his own account, other than those for which an adjustment is provided in Article 8, are not considered to be an indirect payment to the seller, even though they might be regarded as of benefit to the seller. The costs of such activities shall not, therefore, be added to the price actually paid or payable in determining the customs value.

The customs value shall not include the following charges or costs, provided that they are distinguished from the price actually paid or payable for the imported goods:

- (a) charges for construction, erection, assembly, maintenance or technical assistance, undertaken after importation on imported goods such as industrial plant, machinery or equipment;
- (b) the cost of transport after importation;
- (c) duties and taxes of the country of importation.

The price actually paid or payable refers to the price for the imported goods. Thus the flow of dividends or other payments from the buyer to the seller that do not relate to the imported goods are not part of the customs value.

Paragraph 1 (a) (iii)

Among restrictions which would not render a price actually paid or payable unacceptable are restrictions which do not substantially affect the value of the goods. An example of such restrictions would be the case where a seller requires a buyer of automobiles not to sell or exhibit them prior to a fixed date which represents the beginning of a model year.

Paragraph 1 (b)

If the sale or price is subject to some condition or consideration for which a value cannot be determined with respect to the goods being valued, the transaction value shall not be acceptable for customs purposes. Some examples of this include:

- (a) the seller establishes the price of the imported goods on condition that the buyer will also buy other goods in specified quantities;
- (b) the price of the imported goods is dependent upon the price or prices at which the buyer of the imported goods sells other goods to the seller of the imported goods;
- (c) the price is established on the basis of a form of payment extraneous to the imported goods, such as where the imported goods are semi-finished goods which have been provided by the seller on condition that he will receive a specified quantity of the finished goods.

However, conditions or considerations relating to the production or marketing of the imported goods shall not result in rejection of the transaction value. For example, the fact that the buyer furnishes the seller with engineering and plans undertaken in the country of importation shall not result in rejection of the transaction value for the purposes of Article 1. Likewise, if the buyer undertakes on his own account, even though by agreement with the seller, activities relating to the marketing of the imported goods, the value of these activities is not part of the customs value nor shall such activities result in rejection of the transaction value.

Paragraph 2

1. Paragraphs 2 (a) and 2 (b) provide different means of establishing the acceptability of a transaction value.
2. Paragraph 2 (a) provides that where the buyer and the seller are related, the circumstances surrounding the sale shall be examined and the transaction value shall be accepted as the customs value provided that the relationship did not influence the price. It is not intended that there should be an examination of the circumstances in all cases where the buyer and the seller are related. Such examination will only be required where there are doubts about the acceptability of the price. Where the customs administration have no doubts about the acceptability of the price, it should be accepted without requesting further information from the importer. For example, the customs administration may have previously examined the relationship, or it may already have detailed information concerning the buyer and the seller, and may already be satisfied from such examination or information that the relationship did not influence the price.
3. Where the customs administration is unable to accept the transaction value without further inquiry, it should give the importer an opportunity to supply such further detailed information as may be necessary to enable it to examine the circumstances surrounding the sale. In this context, the customs administration should be prepared to examine relevant aspects of the transaction, including the way in which the buyer and seller organize their commercial relations and the way in which the price in question was arrived at, in order to determine whether the relationship influenced the price. Where it can be shown that the buyer and seller, although related under the provisions of Article 15, buy from and sell to each other as if they were not related, this would demonstrate that the price had not been influenced by the relationship. As an example of this, if the price had been settled in a manner consistent with the normal pricing practices of the

industry in question or with the way the seller settles prices for sales to buyers who are not related to him, this would demonstrate that the price had not been influenced by the relationship. As a further example, where it is shown that the price is adequate to ensure recovery of all costs plus a profit which is representative of the firm's overall profit realized over a representative period of time (e.g. on an annual basis) in sales of goods of the same class or kind, this would demonstrate that the price had not been influenced.

4. Paragraph 2 (b) provides an opportunity for the importer to demonstrate that the transaction value closely approximates to a "test" value previously accepted by the customs administration and is therefore acceptable under the provisions of Article 1. Where a test under paragraph 2 (b) is met, it is not necessary to examine the question of influence under paragraph 2 (a). If the customs administration has already sufficient information to be satisfied, without further detailed inquiries, that one of the tests provided in paragraph 2 (b) has been met, there is no reason for it to require the importer to demonstrate that the test can be met. In paragraph 2 (b) the term "unrelated buyers" means buyers who are not related to the seller in any particular case.

Paragraph 2 (b)

A number of factors must be taken into consideration in determining whether one value "closely approximates" to another value. These factors include the nature of the imported goods, the nature of the industry itself, the season in which the goods are imported, and, whether the difference in values is commercially significant. Since these factors may vary from case to case, it would be impossible to apply a uniform standard such as a fixed percentage, in each case. For example, a small difference in value in a case involving one type of goods could be unacceptable while a large difference in a case involving another type of goods might be acceptable in determining whether the transaction value closely approximates to the "test" values set forth in Article 1.2 (b).

Note to Article 2

1. In applying Article 2, the customs administration shall, wherever possible, use a sale of identical goods at the same commercial level and in substantially the same quantities as the goods being valued. Where no such sale is found, a sale of identical goods that takes place under any one of the following three conditions may be used:

- (a) a sale at the same commercial level but in different quantities;
- (b) a sale at a different commercial level but in substantially the same quantities; or
- (c) a sale at a different commercial level and in different quantities.

2. Having found a sale under any one of these three conditions adjustments will then be made, as the case may be, for:

- (a) quantity factors only;
- (b) commercial level factors only; or

(c) both commercial level and quantity factors.

3. The expression “ and/or ” allows the flexibility to use the sales and make the necessary adjustments in any one of the three conditions described above.

4. For the purposes of Article 2, the transaction value of identical imported goods means a customs value, adjusted as provided for in paragraphs 1 (b) and 2 of this Article, which has already been accepted under Article 1.

5. A condition for adjustment because of different commercial levels or different quantities is that such adjustment, whether it leads to an increase or a decrease in the value, be made only on the basis of demonstrated evidence that clearly establishes the reasonableness and accuracy of the adjustments, e.g. valid price lists containing prices referring to different levels or different quantities. As an example of this, if the imported goods being valued consist of a shipment of 10 units and the only identical imported goods for which a transaction value exists involved a sale of 500 units, and it is recognized that the seller grants quantity discounts, the required adjustment may be accomplished by resorting to the seller’s price list and using that price applicable to a sale of 10 units. This does not require that a sale had to have been made in quantities of 10 as long as the price list has been established as being *bona fide* through sales at other quantities. In the absence of such an objective measure, however, the determination of a customs value under the provisions of Article 2 is not appropriate.

Note to Article 3

1. In applying Article 3, the customs administration shall, wherever possible, use a sale of similar goods at the same commercial level and in substantially the same quantities as the goods being valued. Where no such sale is found, a sale of similar goods that takes place under any one of the following three conditions may be used:

- (a) a sale at the same commercial level but in different quantities;
- (b) a sale at a different commercial level but in substantially the same quantities; or
- (c) a sale at a different commercial level and in different quantities.

2. Having found a sale under any one of these three conditions adjustments will then be made, as the case may be, for:

- (a) quantity factors only;
- (b) commercial level factors only; or
- (c) both commercial level and quantity factors.

3. The expression “ and/or ” allows the flexibility to use the sales and make the necessary adjustments in any one of the three conditions described above.

4. For the purpose of Article 3, the transaction value of similar imported goods means a customs value, adjusted as provided for in paragraphs 1 (b) and 2 of this Article, which has already been accepted under Article 1.

5. A condition for adjustment because of different commercial levels or different quantities is that such adjustment, whether it leads to an increase or a decrease in the value, be made only on the basis of demonstrated evidence that clearly establishes the reasonableness and accuracy of the adjustment, e.g. valid price lists containing prices referring to different levels or different quantities. As an example of this, if the imported goods being valued consist of a shipment of 10 units and the only similar imported goods for which a transaction value exists involved a sale of 500 units, and it is recognized that the seller grants quantity discounts, the required adjustment may be accomplished by resorting to the sellers' price list and using that price applicable to a sale of 10 units. This does not require that a sale had to have been made in quantities of 10 as long as the price list has been established as being *bona fide* through sales at other quantities. In the absence of such an objective measure, however, the determination of a customs value under the provisions of Article 3 is not appropriate.

Note to Article 5

1. The term "unit price at which ... goods are sold in the greatest aggregate quantity" means the price at which the greatest number of units is sold in sales to persons who are not related to the persons from whom they buy such goods at the first commercial level after importation at which such sales take place.
2. As an example of this, goods are sold from a price list which grants favourable unit prices for purchases made in larger quantities.

<i>Sale quantity</i>	<i>Unit price</i>	<i>Number of sales</i>	<i>Total quantity sold at each price</i>
1-10 units	100	10 sales of 5 units 5 sales of 3 units	65
11-25 units	95	5 sales of 11 units	55
over 25 units	90	1 sale of 30 units 1 sale of 50 units	80

The greatest number of units sold at a price is 80; therefore, the unit price in the greatest aggregate quantity is 90.

3. As another example of this, two sales occur. In the first sale 500 units are sold at a price of 95 currency units each. In the second sale 400 units are sold at a price of 90 currency units each. In this example, the greatest number of units sold at a particular price is 500; therefore, the unit price in the greatest aggregate quantity is 95.
4. A third example would be the following situation where various quantities are sold at various prices.

(a) *Sales*

<i>Sale quantity</i>	<i>Unit price</i>
40 units	100
30 units	90
15 units	100
50 units	95
25 units	105
35 units	90
5 units	100

(b) *Totals*

<i>Total quantity sold</i>	<i>Unit price</i>
65	90
50	95
60	100
25	105

In this example, the greatest number of units sold at a particular price is 65; therefore, the unit price in the greatest aggregate quantity is 90.

5. Any sale in the importing country, as described in paragraph 1 above, to a person who supplies directly or indirectly free of charge or at reduced cost for use in connection with the production and sale for export of the imported goods any of the elements specified in Article 8.1 (b), should not be taken into account in establishing the unit price for the purposes of Article 5.

6. It should be noted that “profit and general expenses” referred to in Article 5.1 should be taken as a whole. The figure for the purposes of this deduction should be determined on the basis of information supplied by or on behalf of the importer unless his figures are inconsistent with those obtaining in sales in the country of importation of imported goods of the same class or kind. Where the importer’s figures are inconsistent with such figures, the amount for profit and general expenses may be based upon relevant information other than that supplied by or on behalf of the importer.

7. The “general expenses” include the direct and indirect costs of marketing the goods in question.

8. Local taxes payable by reason of the sale of the goods for which a deduction is not made under the provisions of Article 5.1 (a) (iv) shall be deducted under the provisions of Article 5.1 (a) (i).

9. In determining either the commissions or the usual profits and general expenses under the provisions of Article 5.1, the question whether certain goods are “of the same class or kind” as other goods must be determined on a case-by-case basis by reference to the circumstances involved. Sales in the country of importation of the narrowest group or range of imported goods of the same class or kind, which includes the goods being valued, for which the necessary information can be provided, should be examined. For the purposes of Article 5, “goods of the same class or kind” includes goods imported from the same country as the goods being valued as well as goods imported from other countries.

10. For the purposes of Article 5.1 (b), the “ earliest date ” shall be the date by which sales of the imported goods or of identical or similar imported goods are made in sufficient quantity to establish the unit price.

11. Where the method in Article 5.2 is used, deductions made for the value added by further processing shall be based on objective and quantifiable data relating to the cost of such work. Accepted industry formulas, recipes, methods of construction, and other industry practices would form the basis of the calculations.

12. It is recognized that the method of valuation provided for in Article 5.2 would normally not be applicable when, as a result of the further processing, the imported goods lose their identity. However, there can be instances where, although the identity of the imported goods is lost, the value added by the processing can be determined accurately without unreasonable difficulty. On the other hand, there can also be instances where the imported goods maintain their identity but form such a minor element in the goods sold in the country of importation that the use of this valuation method would be unjustified. In view of the above, each situation of this type must be considered on a case-by-case basis.

Note to Article 6

1. As a general rule, customs value is determined under this Agreement on the basis of information readily available in the country of importation. In order to determine a computed value, however, it may be necessary to examine the costs of producing the goods being valued and other information which has to be obtained from outside the country of importation. Furthermore, in most cases the producer of the goods will be outside the jurisdiction of the authorities of the country of importation. The use of the computed value method will generally be limited to those cases where the buyer and seller are related, and the producer is prepared to supply to the authorities of the country of importation the necessary costings and to provide facilities for any subsequent verification which may be necessary.

2. The “ cost or value ” referred to in Article 6.1 (a) is to be determined on the basis of information relating to the production of the goods being valued supplied by or on behalf of the producer. It is to be based upon the commercial accounts of the producer, provided that such accounts are consistent with the generally accepted accounting principles applied in the country where the goods are produced.

3. The “ cost or value ” shall include the cost of elements specified in Article 8.1 (a) (ii) and (iii). It shall also include the value, apportioned as appropriate under the provisions of the relevant note to Article 8, of any element specified in Article 8.1 (b) which has been supplied directly or indirectly by the buyer for use in connexion with the production of the imported goods. The value of the elements specified in Article 8.1 (b) (iv) which are undertaken in the country of importation shall be included only to the extent that such elements are charged to the producer. It is to be understood that no cost or value of the elements referred to in this paragraph shall be counted twice in determining the computed value.

4. The “ amount for profit and general expenses ” referred to in Article 6.1 (b) is to be determined on the basis of information supplied by or on behalf of the producer unless his figures are inconsistent with those usually reflected in sales of goods of the same class or kind as the goods being valued which are made by producers in the country of exportation for export to the country of importation.

5. It should be noted in this context that the “ amount for profit and general expenses ” has to be taken as a whole. It follows that if, in any particular case, the producer’s profit figure is low and his general expenses are high, his profit and general expenses taken together may nevertheless be consistent with that usually reflected in sales of goods of the same class or kind. Such a situation might occur, for example, if a product were being launched in the country of importation and the producer accepted a nil or low profit to offset high general expenses associated with the launch. Where the producer can demonstrate that he is taking a low profit on his sales of the imported goods because of particular commercial circumstances, his actual profit figures should be taken into account provided that he has valid commercial reasons to justify them and his pricing policy reflects usual pricing policies in the branch of industry concerned. Such a situation might occur, for example, where producers have been forced to lower prices temporarily because of an unforeseeable drop in demand, or where they sell goods to complement a range of goods being produced in the country of importation and accept a low profit to maintain competitiveness. Where the producer’s own figures for profit and general expenses are not consistent with those usually reflected in sales of goods of the same class or kind as the goods being valued which are made by producers in the country of exportation for export to the country of importation, the amount for profit and general expenses may be based upon relevant information other than that supplied by or on behalf of the producer of the goods.

6. Where information other than that supplied by or on behalf of the producer is used for the purposes of determining a computed value, the authorities of the importing country shall inform the importer, if the latter so requests, of the source of such information, the data used and the calculations based upon such data, subject to the provisions of Article 10.

7. The “ general expenses ” referred to in Article 6.1 (b) covers the direct and indirect costs of producing and selling the goods for export which are not included under Article 6.1 (a).

8. Whether certain goods are “ of the same class or kind ” as other goods must be determined on a case-by-case basis with reference to the circumstances involved. In determining the usual profits and general expenses under the provisions of Article 6, sales for export to the country of importation of the narrowest group or range of goods, which includes the goods being valued, for which the necessary information can be provided, should be examined. For the purposes of Article 6, “ goods of the same class or kind ” must be from the same country as the goods being valued.

Note to Article 7

1. Customs values determined under the provisions of Article 7 should, to the greatest extent possible, be based on previously determined customs values.

2. The methods of valuation to be employed under Article 7 should be those laid down in Articles 1 to 6, inclusive, but a reasonable flexibility in the application of such methods would be in conformity with the aims and provisions of Article 7.

3. Some examples of reasonable flexibility are as follows:

- (a) *Identical goods*—the requirement that the identical goods should be exported at or about the same time as the goods being valued could be flexibly interpreted; identical imported goods produced in a country other than the country of exportation of the goods being valued could be the basis for customs valuation; customs values of identical imported goods already determined under the provisions of Articles 5 and 6 could be used.
- (b) *Similar goods*—the requirement that the similar goods should be exported at or about the same time as the goods being valued could be flexibly interpreted; similar imported goods produced in a country other than the country of exportation of the goods being valued could be the basis for customs valuation; customs values of similar imported goods already determined under the provisions of Articles 5 and 6 could be used.
- (c) *Deductive method*—the requirement that the goods shall have been sold in the “condition as imported” in Article 5.1 (a) could be flexibly interpreted; the “ninety days” requirement could be administered flexibly.

Note to Article 8

Paragraph 1 (a) (i)

The term “buying commissions” means fees paid by an importer to his agent for the service of representing him abroad in the purchase of the goods being valued.

Paragraph 1 (b) (ii)

1. There are two factors involved in the apportionment of the elements specified in Article 8.1 (b) (ii) to the imported goods—the value of the element itself and the way in which that value is to be apportioned to the imported goods. The apportionment of these elements should be made in a reasonable manner appropriate to the circumstances and in accordance with generally accepted accounting principles.

2. Concerning the value of the element, if the importer acquires the element from a seller not related to him at a given cost, the value of the element is that cost. If the element was produced by the importer or by a person related to him, its value would be the cost of producing it. If the element had been previously used by the importer, regardless of whether it had been acquired or produced by such importer, the original cost of acquisition or production would have to be adjusted downward to reflect its use in order to arrive at the value of the element.

3. Once a value has been determined for the element, it is necessary to apportion that value to the imported goods. Various possibilities exist. For example, the value might be apportioned to the first shipment if the importer wishes to pay duty on the entire value at one time. As another example, the importer may request that the value be apportioned over the number of units produced up to the time of the first shipment. As a further example, he may request that the value be apportioned over the entire anticipated production where contracts or firm commitments exist for that production. The method of apportionment used will depend upon the documentation provided by the importer.

4. As an illustration of the above, an importer provides the producer with a mould to be used in the production of the imported goods and contracts with him to buy 10,000 units. By the time of arrival of the first shipment of 1,000 units, the producer has already produced 4,000 units. The importer may request the customs administration to apportion the value of the mould over 1,000 units, 4,000 units or 10,000 units.

Paragraph 1 (b) (iv)

1. Additions for the elements specified in Article 8.1 (b) (iv) should be based on objective and quantifiable data. In order to minimize the burden for both the importer and customs administration in determining the values to be added, data readily available in the buyer's commercial record system should be used in so far as possible.

2. For those elements supplied by the buyer which were purchased or leased by the buyer, the addition would be the cost of the purchase or the lease. No addition shall be made for those elements available in the public domain, other than the cost of obtaining copies of them.

3. The ease with which it may be possible to calculate the values to be added will depend on a particular firm's structure and management practice, as well as its accounting methods.

4. For example, it is possible that a firm which imports a variety of products from several countries maintains the records of its design centre outside the country of importation in such a way as to show accurately the costs attributable to a given product. In such cases, a direct adjustment may appropriately be made under the provisions of Article 8.

5. In another case, a firm may carry the cost of the design centre outside the country of importation as a general overhead expense without allocation to specific products. In this instance, an appropriate adjustment could be made under the provisions of Article 8 with respect to the imported goods by apportioning total design centre costs over total production benefiting from the design centre and adding such apportioned cost on a unit basis to imports.

6. Variations in the above circumstances will, of course, require different factors to be considered in determining the proper method of allocation.

7. In cases where the production of the element in question involves a number of countries and over a period of time, the adjustment should be limited to the value actually added to that element outside the country of importation.

Paragraph 1 (c)

1. The royalties and licence fees referred to in Article 8.1 (c) may include, among other things, payments in respect to patents, trademarks and copyrights. However, the charges for the right to reproduce the imported goods in the country of importation shall not be added to the price actually paid or payable for the imported goods in determining the customs value.
2. Payments made by the buyer for the right to distribute or resell the imported goods shall not be added to the price actually paid or payable for the imported goods if such payments are not a condition of the sale for export to the country of importation of the imported goods.

Paragraph 3

Where objective and quantifiable data do not exist with regard to the additions required to be made under the provisions of Article 8, the transaction value cannot be determined under the provisions of Article 1. As an illustration of this, a royalty is paid on the basis of the price in a sale in the importing country of a litre of a particular product that was imported by the kilogram and made up into a solution after importation. If the royalty is based partially on the imported goods and partially on other factors which have nothing to do with the imported goods (such as when the imported goods are mixed with domestic ingredients and are no longer separately identifiable, or when the royalty cannot be distinguished from special financial arrangements between the buyer and the seller), it would be inappropriate to attempt to make an addition for the royalty. However, if the amount of this royalty is based only on the imported goods and can be readily quantified, an addition to the price actually paid or payable can be made.

Note to Article 9

For the purposes of Article 9, “time of importation” may include the time of entry for customs purposes.

Note to Article 11

1. Article 11 provides the importer with the right to appeal against a valuation determination made by the customs administration for the goods being valued. Appeal may first be to a higher level in the customs administration, but the importer shall have the right in the final instance to appeal to the judiciary.
2. “Without penalty” means that the importer shall not be subject to a fine or threat of fine merely because he chose to exercise his right of appeal. Payment of normal court costs and lawyers’ fees shall not be considered to be a fine.
3. However, nothing in Article 11 shall prevent a Party from requiring full payment of assessed customs duties prior to an appeal.

Note to Article 15

Paragraph 4

For the purposes of this Article, the term “ persons ” includes legal persons, where appropriate.

Paragraph 4 (e)

For the purposes of this Agreement, one person shall be deemed to control another when the former is legally or operationally in a position to exercise restraint or direction over the latter.

ANNEX II

TECHNICAL COMMITTEE ON CUSTOMS VALUATION

1. In accordance with Article 18 of this Agreement, the Technical Committee shall be established under the auspices of the Customs Co-operation Council with a view, at the technical level, towards uniformity in interpretation and application of this Agreement.
2. The responsibilities of the Technical Committee shall include the following:
 - (a) to examine specific technical problems arising in the day-to-day administration of the customs valuation system of Parties and to give advisory opinions on appropriate solutions based upon the facts presented;
 - (b) to study, as requested, valuation laws, procedures and practices as they relate to this Agreement and to prepare reports on the results of such studies;
 - (c) to prepare and circulate annual reports on the technical aspects of the operation and status of this Agreement;
 - (d) to furnish such information and advice on any matters concerning the valuation of imported goods for customs purposes as may be requested by any Party or the Committee. Such information and advice may take the form of advisory opinions, commentaries or explanatory notes;
 - (e) to facilitate, as requested, technical assistance to Parties with a view to furthering the international acceptance of this Agreement; and
 - (f) to exercise such other responsibilities as the Committee may assign to it.

General

3. The Technical Committee shall attempt to conclude its work on specific matters, especially those referred to it by Parties or the Committee, in a reasonably short period of time.
4. The Technical Committee shall be assisted as appropriate in its activities by the Secretariat of the Customs Co-operation Council.

Representation

5. Each Party shall have the right to be represented on the Technical Committee. Each Party may nominate one delegate and one or more alternates to be its representatives on the Technical Committee. Such a Party so represented on the Technical Committee is hereinafter referred to as a member of the Technical Committee. Representatives of members of the Technical Committee may be assisted by advisers. The GATT secretariat may also attend such meetings with observer status.

6. Members of the Customs Co-operation Council who are not Parties may be represented at meetings of the Technical Committee by one delegate and one or more alternates. Such representatives shall attend meetings of the Technical Committee as observers.

7. Subject to the approval of the Chairman of the Technical Committee, the Secretary-General of the Customs Co-operation Council (hereinafter referred to as "the Secretary-General") may invite representatives of governments which are neither Parties nor members of the Customs Co-operation Council and representatives of international governmental and trade organizations to attend meetings of the Technical Committee as observers.

8. Nominations of delegates, alternates and advisers to meetings of the Technical Committee shall be made to the Secretary-General.

Technical Committee meetings

9. The Technical Committee shall meet as necessary but at least two times a year. The date of each meeting shall be fixed by the Technical Committee at its preceding session. The date of the meeting may be varied either at the request of any member of the Technical Committee concurred in by a simple majority of the members of the Technical Committee or, in cases requiring urgent attention, at the request of the Chairman.

10. The meetings of the Technical Committee shall be held at the headquarters of the Customs Co-operation Council unless otherwise decided.

11. The Secretary-General shall inform all members of the Technical Committee and those included under paragraphs 6 and 7 at least thirty days in advance, except in urgent cases, of the opening date of each session of the Technical Committee.

Agenda

12. A provisional agenda for each session shall be drawn up by the Secretary-General and circulated to the members of the Technical Committee and to those included under paragraphs 6 and 7 at least thirty days in advance of the session, except in urgent cases. This agenda shall comprise all items whose inclusion has been approved by the Technical Committee during its preceding session, all items included by the Chairman on his own initiative, and all items whose inclusion has been requested by the Secretary-General, by the Committee or by any member of the Technical Committee.

13. The Technical Committee shall determine its agenda at the opening of each session. During the session the agenda may be altered at any time by the Technical Committee.

Officers and conduct of business

14. The Technical Committee shall elect from among the delegates of its members a Chairman and one or more Vice-Chairmen. The Chairman and Vice-Chairmen shall each hold office for a period of one year. The retiring Chairman and Vice-Chairmen are eligible for re-election. A Chairman or Vice-Chairman who ceases

to represent a member of the Technical Committee shall automatically lose his mandate.

15. If the Chairman is absent from any meeting or part thereof, a Vice-Chairman shall preside. In that event, the latter shall have the same powers and duties as the Chairman.

16. The Chairman of the meeting shall participate in the proceedings of the Technical Committee as such and not as the representative of a member of the Technical Committee.

17. In addition to exercising the powers conferred upon him elsewhere by these rules, the Chairman shall declare the opening and closing of each meeting, direct the discussion, accord the right to speak, and, pursuant to these rules, have control of the proceedings. The Chairman may also call a speaker to order if his remarks are not relevant.

18. During discussion of any matter a delegation may raise a point of order. In this event, the Chairman shall immediately state his ruling. If this ruling is challenged, the Chairman shall submit it to the meeting for decisions and it shall stand unless overruled.

19. The Secretary-General, or officers of the Secretariat designated by him, shall perform the secretarial work of meetings of the Technical Committee.

Quorum and voting

20. Representatives of a simple majority of the members of the Technical Committee shall constitute a quorum.

21. Each member of the Technical Committee shall have one vote. A decision of the Technical Committee shall be taken by a majority comprising at least two thirds of the members present. Regardless of the outcome of the vote on a particular matter, the Technical Committee shall be free to make a full report to the Committee and to the Customs Co-operation Council on that matter indicating the different views expressed in the relevant discussions.

Languages and records

22. The official languages of the Technical Committee shall be English, French and Spanish. Speeches or statements made in any of these three languages shall be immediately translated into the other official languages unless all delegations agree to dispense with translation. Speeches or statements made in any other language shall be translated into English, French and Spanish, subject to the same conditions, but in that event the delegation concerned shall provide the translation into English, French or Spanish. Only English, French and Spanish shall be used for the official documents of the Technical Committee. Memoranda and correspondence for the consideration of the Technical Committee must be presented in one of the official languages.

23. The Technical Committee shall draw up a report of all its sessions and, if the Chairman considers it necessary, minutes or summary records of its meetings. The Chairman or his designee shall report on the work of the Technical Committee at each meeting of the Committee and at each meeting of the Customs Co-operation Council.

ANNEX III

AD HOC PANELS

1. *Ad hoc* panels established by the Committee under this Agreement shall have the following responsibilities:

- (a) to examine the matter referred to it by the Committee;
- (b) to consult with the parties to the dispute and give full opportunity for them to develop a mutually satisfactory solution; and
- (c) to make a statement concerning the facts of the matter as they relate to the application of the provisions of this Agreement and, make such findings as will assist the Committee in making recommendations or giving rulings on the matter.

2. In order to facilitate the constitution of panels, the Chairman of the Committee shall maintain an informal indicative list of government officials knowledgeable in the area of customs valuation and experienced in the field of trade relations and economic development. This list may also include persons other than government officials. In this connexion, each Party shall be invited to indicate at the beginning of every year to the Chairman of the Committee the name(s) of the one or two governmental experts whom the Parties would be willing to make available for such work. When a panel is established, the Chairman, after consultation with the Parties concerned, shall, within seven days of such establishment propose the composition of the panel consisting of three or five members and preferably government officials. The Parties directly concerned shall react within seven working days to nominations of panel members by the Chairman and shall not oppose nominations except for compelling reasons.

Citizens of countries whose governments are parties to a dispute shall not be eligible for membership of the panel concerned with that dispute. Panel members shall serve in their individual capacities and not as government representatives, nor as representatives of any organization. Governments or organizations shall therefore not give them instructions with regard to matters before a panel.

3. Each panel shall develop its own working procedures. All Parties having a substantial interest in the matter and having notified this to the Committee shall have an opportunity to be heard. Each panel may consult and seek information and technical advice from any source it deems appropriate. Before a panel seeks such information or technical advice from a source within the jurisdiction of a Party, it shall inform the government of that Party. Any Party shall respond promptly and fully to any request by a panel for such information as the panel considers necessary and appropriate. Confidential information provided to the panel shall not be disclosed without the specific permission of the person or government providing such information. Where such information is requested from the panel but release of such information by the panel is not authorized, a

non-confidential summary of the information, authorized by the person or government providing the information, will be provided.

4. Where the parties to the dispute have failed to reach a satisfactory solution the panel shall submit its findings in writing. The report of a panel should normally set out the rationale behind its findings. Where a settlement of the matter is reached between the parties, the report of the panel may be confined to a brief description of the dispute and to a statement that a solution has been reached.

5. Panels shall use such report of the Technical Committee as may have been issued under Article 20.4 of this Agreement as the basis for their consideration of issues that involve questions of a technical nature.

6. The time required by panels will vary with the particular case. They should aim to deliver their findings, and where appropriate, recommendations, to the Committee without undue delay, normally within a period of three months from the date that the panel was established.

7. To encourage development of mutually satisfactory solutions between the parties to a dispute and with a view to obtaining their comments, each panel should first submit the descriptive part of its report to the Parties concerned, and should subsequently submit to the parties to the dispute its conclusions, or an outline thereof, a reasonable period of time before they are circulated to the Parties.

PROTOCOL
TO THE AGREEMENT
ON IMPLEMENTATION OF ARTICLE VII
OF THE GENERAL AGREEMENT
ON TARIFFS AND TRADE

The Parties to the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade (hereinafter referred to as "the Agreement").

Having regard to the Multilateral Trade Negotiations and to the desire expressed by the Trade Negotiations Committee at its meeting of 11 and 12 April 1979 to arrive at a single text of an Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade;

Recognizing that developing countries may have particular problems in applying the Agreement;

Considering that the provisions of Article 27 of the Agreement relating to amendments have not yet entered into force;

Hereby:

I

1. *Agree to the deletion of the provision of Article 1.2(b)(iv) of the Agreement;*
2. *Recognize that the five-year delay in the application of the provisions of the Agreement by developing countries provided for in Article 21.1 may, in practice, be insufficient for certain developing countries. In such cases a developing country Party to the Agreement may request before the end of the period referred to in Article 21.1 an extension of such period, it being understood that the Parties to the Agreement will give sympathetic consideration to such a request in cases where the developing country in question can show good cause;*
3. *Recognize that developing countries which currently value goods on the basis of officially established minimum values may wish to make a reservation to enable them to retain such values on a limited and transitional basis under such terms and conditions as may be agreed to by the Parties to the Agreement;*

4. *Recognize* that developing countries which consider that the reversal of the sequential order at the request of the importer provided for in Article 4 of the Agreement may give rise to real difficulties for them may wish to make a reservation to Article 4 in the following terms:

“The Government of reserves the right to provide that the relevant provision of Article 4 of the Agreement shall apply only when the customs authorities agree to the request to reverse the order of Articles 5 and 6.”

If developing countries make such a reservation, the Parties to the Agreement shall consent to it under Article 23 of the Agreement;

5. *Recognize* that developing countries may wish to make a reservation with respect to Article 5.2 of the Agreement in the following terms:

“The Government of reserves the right to provide that Article 5.2 of the Agreement shall be applied in accordance with the provisions of the relevant note thereto whether or not the importer so requests.”

If developing countries make such a reservation, the Parties to the Agreement shall consent to it under Article 23 of the Agreement;

6. *Recognize* that certain developing countries have expressed concern that there may be problems in the implementation of Article 1 of the Agreement insofar as it relates to importations into their countries by sole agents, sole distributors and sole concessionaires. The Parties to the Agreement agree that, if such problems arise in practice in developing countries applying the Agreement, a study of this question shall be made, at the request of such countries, with a view to finding appropriate solutions;

7. *Agree* that Article 17 recognizes that in applying the Agreement, customs administrations may need to make enquiries concerning the truth or accuracy of any statement, document or declaration presented to them for customs valuation purposes. They further agree that the Article thus acknowledges that enquiries may be made which are, for example, aimed at verifying that the elements of value declared or presented to customs in connection with a determination of customs value are complete and correct. They recognize that Parties to the Agreement, subject to their national laws and procedures, have the right to expect the full co-operation of importers in these enquiries;

8. *Agree* that the price actually paid or payable includes all payments actually made or to be made as a condition of sale of the imported goods, by the buyer to the seller, or by the buyer to a third party to satisfy an obligation of the seller.

II

1. Upon the entry into force of the Agreement the provisions of this Protocol shall be deemed to be part of the Agreement.
2. This Protocol shall be deposited with the Director-General to the CONTRACTING PARTIES to the GATT. It is open for acceptance, by signature or otherwise, by signatories of the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade and by other governments accepting or acceding to the Agreement pursuant to the provisions of Article 22 thereof.

Done at Geneva this first day of November 1979 in a single copy in the English, French and Spanish languages, each text being authentic.

APPENDIX II

GATT ARTICLE XXVIII: MODIFICATION OF SCHEDULES

1. On the first day of each three-year period, the first period beginning on 1 January 1958 (or on the first day of any other period* that may be specified by the CONTRACTING PARTIES by two-thirds of the votes cast) a contracting party (hereafter in this Article referred to as the "applicant contracting party") may, by negotiation and agreement with any contracting party with which such concession was initially negotiated and with any other contracting party determined by the CONTRACTING PARTIES to have a principal supplying interest* (which two preceding categories of contracting parties, together with the applicant contracting party, are in this Article hereinafter referred to as the "contracting parties primarily concerned"), and subject to consultation with any other contracting party determined by the CONTRACTING PARTIES to have a substantial interest* in such concession, modify or withdraw a concession* included in the appropriate Schedule annexed to this Agreement.

2. In such negotiations and agreement, which may include provision for compensatory adjustment with respect to other products, the contracting parties concerned shall endeavour to maintain a general level of reciprocal and mutually advantageous concessions not less favourable to trade than that provided for in this Agreement prior to such negotiations.

3. (a) If agreement between the contracting parties primarily concerned cannot be reached before 1 January 1958 or before the expiration of a period envisaged in paragraph 1 of this Article, the contracting party which proposes to modify or withdraw the concession shall, nevertheless, be free to do so and if such action is taken any contracting party with which such concession was initially negotiated, any contracting party determined under paragraph 1 to have a principal supplying interest and any contracting party determined under paragraph 1 to have a substantial interest shall then be free not later than six months after such action is taken, to withdraw, upon the expiration of thirty days from the day on which written notice of such withdrawal is received by the CONTRACTING PARTIES, substantially equivalent concessions initially negotiated with the applicant contracting party.

(b) If agreement between the contracting parties primarily concerned is reached but any other contracting party determined under paragraph 1 of this Article to have a substantial interest is not satisfied, such other contracting party shall be free, not later than six months after action under such agreement is taken, to withdraw, upon the expiration of thirty days from the day on which written notice of such withdrawal is received by the CONTRACTING PARTIES, substantially equivalent concessions initially negotiated with the applicant contracting party.

4. The CONTRACTING PARTIES may, at any time, in special circumstances, authorize* a contracting party to enter into negotiations for modification or withdrawal of a concession included in the appropriate Schedule annexed to this Agreement subject to the following procedures and conditions:

- (a) Such negotiations* and any related consultations shall be conducted in accordance with the provisions of paragraphs 1 and 2 of this Article.
- (b) If agreement between the contracting parties primarily concerned is reached in the negotiations, the provisions of paragraph 3 (b) of this Article shall apply.
- (c) If agreement between the contracting parties primarily concerned is not reached within a period of sixty days* after negotiations have been authorized, or within such longer period as the CONTRACTING PARTIES may have prescribed, the applicant contracting party may refer the matter to the CONTRACTING PARTIES.
- (d) Upon such reference, the CONTRACTING PARTIES shall promptly examine the matter and submit their views to the contracting parties primarily concerned with the aim of achieving a settlement. If a settlement is reached, the provisions of paragraph 3 (b) shall apply as if agreement between the contracting parties primarily concerned had been reached. If no settlement is reached between the contracting parties primarily concerned, the applicant contracting party shall be free to modify or withdraw the concession, unless the CONTRACTING PARTIES determine that the applicant contracting party has unreasonably failed to offer adequate compensation.* If such action is taken, any contracting party with which the concession was initially negotiated, any contracting party determined under paragraph 4 (a) to have a principal supplying interest and any contracting party determined under paragraph 4 (a) to have a substantial interest, shall be free, not later than six months after such action is taken, to modify or withdraw, upon the expiration of thirty days from the day on which written notice of such withdrawal is received by the CONTRACTING PARTIES, substantially equivalent concessions initially negotiated with the application contracting party.

5. Before 1 January 1958 and before the end of any period envisaged in paragraph 1 a contracting party may elect by notifying the CONTRACTING PARTIES to reserve the right, for the duration of the next period, to modify the appropriate Schedule in accordance with the procedures of paragraphs 1 to 3. If a contracting party so elects, other contracting parties shall have the right, during the same period, to modify or withdraw, in accordance with the same procedures, concessions initially negotiated with that contracting party.

APPENDIX/ANNEXE III

Proposed Amendments to the *Customs Act*
Respecting the Valuation for Duty of
Imported Goods

Avant-projet sur les modifications à apporter
à la *Loi sur les douanes* au sujet de
l'évaluation en douane des marchandises
importées

1. Sections 35 to 44 of the *Customs Act*
are repealed and the following substituted
therefor:

1. Les articles 35 à 44 de la *Loi sur les
douanes* sont abrogés et remplacés par ce qui
suit:

Determination
of value for
duty

"35. (1) The value for duty of imported
goods shall be determined in accordance
with sections 36 to 44.

"35. (1) La valeur en douane des mar-
chandises importées est déterminée confor-
mément aux articles 36 à 44.

Détermination
de la valeur en
douane

Definitions

(2) In this section and sections 36 to 44,
"computed value" means, in respect of any
imported goods being appraised, the
value determined in accordance with
subsections 41(2) and (4);

(2) Les définitions qui suivent s'appli-
quent au présent article et aux articles 36
à 44.

Définitions

"computed
value"
«valeur
reconstituée»

"country of
export"
«pays
d'exportation»

"country of export", or the country from
which any goods are exported, means
the country from which the goods are
shipped directly to Canada;

«importer» Importer au Canada.

10 «importer»
"import"

"deductive"
value"
«valeur de
référence»

"deductive value" means, in respect of any
imported goods being appraised, the
value determined in accordance with
subsection 40(2);

«marchandises de même nature ou de
même espèce» En matière d'évaluation
de marchandises importées, celles qui:

«marchandises
de même nature
ou de même
espèce»
"goods of the
same..."

"goods of the
same class or
kind"
«marchandises
de même
nature...»

"goods of the same class or kind", in rela-
tion to any imported goods being
appraised, means imported goods that

a) d'une part sont classées dans un
groupe ou une gamme de marchandi-
ses importées produites par une bran-
che de production particulière ou un
secteur particulier d'une branche de
production qui comprend des mar-
chandises identiques et semblables
aux marchandises à évaluer;

(a) are within a group or range of
imported goods produced by a par-
ticular industry or industry sector
that includes identical goods and
similar goods in relation to the goods
being appraised, and
(b) for the purposes of

b) d'autre part, en cas d'application:
(i) de l'article 40, ont été exportées
de n'importe quel pays,
(ii) de l'article 41, ont été produites
dans le même pays que les mar-
chandises à évaluer et exportées du
pays de production et d'exportation
de celles-ci.

(i) section 40, were exported from
any country, and
(ii) section 41, were produced in
and exported from the same coun-
try as the country in and from
which the goods being appraised
were produced and exported;

«marchandises identiques» En matière
d'évaluation de marchandises importées,
celles qui concurremment:

30 «marchandises
identiques»
"identical..."

a) sont à tous égards pareilles aux
marchandises à évaluer, notamment
quant aux caractéristiques physiques,
à la qualité et à la réputation, abs-

<p>“identical goods” «marchandises identiques»</p>	<p>“identical goods”, in relation to any imported goods being appraised, means imported goods that</p> <p>(a) are the same in all respects, including physical characteristics, quality and reputation, as the goods being appraised, except for minor differences in appearance that do not otherwise affect the value of the goods,</p> <p>(b) were produced in the same country as the country in which the goods being appraised were produced, and</p> <p>(c) were produced by or on behalf of the same person as the person who produced the goods being appraised,</p> <p>but does not include imported goods where engineering, development work, art work, design work, plans or sketches undertaken in Canada were supplied, directly or indirectly, by the purchaser of those imported goods free of charge or at a reduced cost for use in connection with the production and sale for export of those imported goods;</p>	<p>traction faite des différences mineures d'aspect qui n'affectent pas autrement leur valeur,</p> <p>b) ont été produites dans le même pays que les marchandises à évaluer,</p> <p>c) ont été produites par ou pour le producteur des marchandises à évaluer,</p> <p>à l'exclusion des marchandises importées qui incorporent ou comportent des travaux d'ingénierie, d'étude, d'art, d'esthétique industrielle, plans ou croquis exécutés au Canada et fournis, directement ou indirectement, sans frais ou à un coût réduit, par l'acheteur des marchandises en vue de leur production et de leur vente à l'exportation.</p> <p>«marchandises semblables» En matière d'évaluation de marchandises importées, celles qui concurremment:</p>	<p>«marchandises semblables» “similar...”</p>
<p>“import” «importer»</p>	<p>“import” means import into Canada;</p>	<p>a) ressemblent beaucoup, quant à leurs matières, composants et pièces et à leurs caractéristiques, aux marchandises à évaluer et leur sont commercialement interchangeables,</p> <p>b) ont été produites dans le même pays que les marchandises à évaluer,</p> <p>c) ont été produites par ou pour le producteur des marchandises à évaluer,</p>	<p>20</p> <p>25</p> <p>30</p>
<p>“person” «personne»</p>	<p>“person” includes any body corporate wherever and however incorporated, a partnership and an association;</p>	<p>à l'exclusion des marchandises importées qui incorporent ou comportent des travaux d'ingénierie, d'étude, d'art, d'esthétique industrielle, plans ou croquis exécutés au Canada et fournis, directement ou indirectement, sans frais ou à un coût réduit, par l'acheteur des marchandises en vue de leur production et de leur vente à l'exportation.</p>	<p>35</p>
<p>“prescribed” «prescrit»</p>	<p>“prescribed” means prescribed by regulation of the Governor in Council;</p>	<p>«pays d'exportation» Le pays d'où les marchandises sont expédiées directement au Canada.</p>	<p>40</p> <p>«pays d'exportation» “country of...”</p>
<p>“price paid or payable” «prix payé ou...»</p>	<p>“price paid or payable”, in respect of the sale of any goods for export to Canada by a vendor to a purchaser in Canada, means the aggregate of all payments made or to be made, directly or indirectly, in respect of the goods by the purchaser to or for the benefit of the vendor;</p>	<p>«personne» S'entend également des personnes morales, quel qu'en soit le lieu ou le mode de constitution, des sociétés de personnes et des associations.</p>	<p>45</p> <p>«personne» “person”</p>
<p>“produce” «produire»</p>	<p>“produce” includes grow, manufacture and mine;</p>	<p>«prescrit» ou «réglementaire» Établi par règlement pris par le gouverneur en conseil.</p>	<p>«prescrit» ou «réglementaire» “prescribed”</p>
<p>“similar goods” «marchandises semblables»</p>	<p>“similar goods”, in relation to any imported goods being appraised, means imported goods that</p> <p>(a) closely resemble the goods being appraised in respect of component materials and parts and characteristics and are commercially inter-</p>		

changeable with the goods being appraised,

(b) were produced in the same country as the country in which the goods being appraised were produced, and 5
(c) were produced by or on behalf of the same person as the person who produced the goods being appraised,

but does not include imported goods where engineering, development work, 10 art work, design work, plans or sketches undertaken in Canada were supplied, directly or indirectly, by the purchaser of those imported goods free of charge or at a reduced cost for use in connection with the production and sale for export of those imported goods;

"sufficient information", in respect of the determination of any amount, difference or adjustment, means objective and 20 quantifiable information that clearly establishes the accuracy of the amount, difference or adjustment;

"transaction value", in respect of the sale of any goods for export to Canada by a 25 vendor to a purchaser in Canada, means the value determined in accordance with subsection 37(3).

"sufficient information"
«renseignements...»

"transaction value"
«valeur transactionnelle»

Goods deemed to be identical goods or similar goods

(3) For the purposes of this section and sections 36 to 44, where there are no goods 30 that were produced by or on behalf of the same person as the person who produced the goods being appraised and that are otherwise identical goods or similar goods, as the case may be, goods that were produced by or on behalf of a different person from the person who produced the goods being appraised and that are otherwise identical goods or similar goods, as the case may be, shall be deemed to be identical goods or similar goods, as the case may be. 40

Related persons

(4) For the purposes of sections 36 to 44, "related persons", or persons related to each other, are 45

(a) individuals connected by blood relationship, marriage or adoption within

«prix payé ou à payer» En cas de vente de marchandises pour l'exportation au Canada à un acheteur qui s'y trouve, la somme de tous les versements effectués ou à effectuer par l'acheteur directement ou indirectement au vendeur ou à son profit, en paiement des marchandises.

«produire» A, entre autres, le sens de cultiver, fabriquer et extraire. 10

«renseignements suffisants» Renseignements objectifs et quantifiables permettant nettement, quand il s'agit de déterminer un montant, une différence ou un ajustement, de les chiffrer avec exactitude. 15

«valeur reconstituée» En matière d'évaluation de marchandises importées, la valeur déterminée conformément aux paragraphes 41(2) et (4). 20

«valeur de référence» En matière d'évaluation de marchandises importées, la valeur déterminée conformément au paragraphe 40(2).

«valeur transactionnelle» En cas de vente 25 de marchandises pour exportation au Canada à un acheteur qui s'y trouve, la valeur déterminée conformément au paragraphe 37(3).

«prix payé ou à payer»
"price paid or..."

«produire»
"produce"

«renseignements suffisants»
"sufficient..."

«valeur reconstituée»
"computed..."

«valeur de référence»
"deductive..."

«valeur transactionnelle»
"transaction..."

(3) Pour l'application du présent article 30 et des articles 36 à 44, à défaut de marchandises identiques ou semblables, selon le cas, produites par le producteur des marchandises à évaluer ou en son nom, sont considérées comme semblables ou 35 identiques les marchandises qui l'auraient effectivement été si elles avaient été produites par ce producteur ou en son nom.

Assimilation à des marchandises identiques ou semblables

(4) Pour l'application des articles 36 à 44, sont liées entre elles les personnes 40 suivantes:

a) les personnes physiques liées par les liens du sang, du mariage ou de l'adop-

Personnes liées

the meaning of subsection 251(6) and section 252 of the *Income Tax Act*;

(b) an officer or director of a corporation, association, partnership or other organization and such organization; 5

(c) an officer or director of a corporation, association, partnership or other organization and an officer or director of another such organization if each such individual is an officer or director 10 of both those organizations;

(d) partners;

(e) an employer and the employee of the employer;

(f) two or more persons who, directly or 15 indirectly, control or are controlled by the same person;

(g) a person who, directly or indirectly, controls or is controlled by another person and the other person; 20

(h) two or more persons where any person, directly or indirectly, owns, holds or controls five per cent or more of the outstanding voting stock or shares of those persons; or 25

(i) any person who, directly or indirectly, owns, holds or controls five per cent or more of the outstanding voting stock or shares of a corporation, association, partnership or other organization and 30 such organization.

tion au sens du paragraphe 251(6) et de l'article 252 de la *Loi de l'impôt sur le revenu*;

b) la personne morale, association, société de personnes ou autre organisation et ses dirigeants ou administrateurs; 5

c) les dirigeants ou administrateurs communs de deux personnes morales, associations, sociétés de personnes ou autres organisations; 10

d) les associés;

e) l'employeur et son employé;

f) les personnes qui, directement ou indirectement, contrôlent une tierce personne ou sont contrôlées par une tierce 15 personne;

g) deux personnes dont l'une contrôle l'autre directement ou indirectement;

h) plusieurs personnes dont une même personne en possède, détient ou contrôle 20 directement ou indirectement au moins cinq pour cent des actions ou parts émises et assorties du droit de vote;

i) la personne morale, association, société de personnes ou autre organisation, et toute personne qui en possède, détient ou contrôle directement ou indirectement au moins cinq pour cent des actions ou parts émises et assorties du droit de vote. 30

Primary basis
of appraisal

36. (1) Subject to subsections (2) to (4), the value for duty of imported goods shall be appraised under section 37 on the basis of the transaction value of the goods 35 when the goods are sold for export to Canada.

Subsidiary
bases of
appraisal

(2) Where the value for duty of imported goods cannot be appraised under section 37, it shall be appraised on the basis 40 of the first of the following values, considered in the order set out herein, that can be determined in respect of the goods and that can, under sections 38 to 41, be the basis on which the value for duty of the 45 goods is appraised:

Base principale
de l'évaluation

36. (1) Sous réserve des paragraphes (2) à (4), la valeur en douane des marchandises importées est déterminée par application de l'article 37 sur la base de leur valeur transactionnelle au moment de 35 la vente pour l'exportation au Canada.

Bases
secondaires de
l'évaluation

(2) Lorsque la valeur en douane des marchandises importées n'est pas déterminable par application de l'article 37, elle est déterminée en utilisant les valeurs ci- 40 après qui peuvent constituer la base de l'évaluation par l'application des articles 38 à 41, prises dans l'ordre où elles s'appliquent:

a) la valeur transactionnelle de mar- 45 chandises identiques répondant aux exigences visées à l'article 38;

- (a) the transaction value of identical goods that meets the requirements set out in section 38;
- (b) the transaction value of similar goods that meets the requirements set out in section 39; 5
- (c) the deductive value in respect of the goods; and
- (d) the computed value in respect of the goods. 10

Request of
Importer

(3) Notwithstanding subsection (2), on the written request of the importer of any goods being appraised made prior to the commencement of the appraisal of those goods, the order of consideration of the values referred to in paragraphs (2)(c) and (d) shall be reversed. 15

Residual basis
of appraisal

(4) Where the value for duty of imported goods cannot be appraised on the basis of any of the values referred to in paragraphs (2)(a) to (d), the value for duty of those goods shall be appraised under section 42.

Transaction
value as
primary basis of
appraisal

37. (1) Subject to subsection (5), the value for duty of imported goods is the transaction value of the goods when the goods are sold for export to Canada by a vendor to a purchaser in Canada if

- (a) there are no restrictions respecting the disposition or use of the goods by the purchaser, other than restrictions that
 - (i) are imposed by law,
 - (ii) limit the geographical area in which the goods may be resold, or
 - (iii) do not substantially affect the value of the goods; 35
- (b) the sale of the goods by the vendor to the purchaser or the price paid or payable for the goods is not subject to some condition or consideration in respect of which a value cannot be determined; 40
- (c) where any part of the proceeds of any subsequent resale, disposal or use of the goods by the purchaser is to accrue, directly or indirectly, to the vendor, the price paid or payable for the goods includes the value of that part of the 45

- b) la valeur transactionnelle de marchandises semblables répondant aux exigences visées à l'article 39;
- c) la valeur de référence des marchandises; 5
- d) la valeur reconstituée des marchandises.

5

Demande de
l'importateur

(3) Nonobstant le paragraphe (2), à la demande écrite de l'importateur des marchandises à évaluer présentée avant le début de l'évaluation, l'ordre d'applicabilité des valeurs visées aux alinéas (2)c) et d) est inversé. 10

Dernière base
de l'évaluation

(4) En cas d'inapplicabilité des alinéas (2)a) à d), la valeur en douane des marchandises importées est déterminée par l'application de l'article 42. 15

Valeur
transactionnelle
servant de base
principale
d'évaluation

37. (1) Sous réserve du paragraphe (5), la valeur en douane des marchandises importées est leur valeur transactionnelle au moment de la vente pour l'exportation au Canada à un acheteur qui s'y trouve si les conditions suivantes sont réunies: 20

- a) il n'existe pas de restriction concernant la cession ou l'utilisation des marchandises par l'acheteur, autre qu'une restriction qui:
 - (i) soit est imposée par la loi,
 - (ii) soit limite la zone géographique dans laquelle les marchandises peuvent être revendues, 30
 - (iii) soit n'affecte pas substantiellement la valeur des marchandises;
- b) la vente des marchandises à l'acheteur ou le prix payé ou à payer par celui-ci n'est pas subordonné à des conditions ou à des prestations dont la valeur n'est pas déterminable; 35
- c) aucune partie du produit de toute revente, disposition ou utilisation ultérieure des marchandises par l'acheteur ne revient directement ou indirectement 40

proceeds or can be adjusted in accordance with subparagraph (4)(a)(v); and

(d) the purchaser and the vendor of the goods are not related persons at the time the goods are sold for export or, where the purchaser and the vendor are related persons at that time,

(i) their relationship did not influence the price paid or payable for the goods, or

(ii) the importer demonstrates that the transaction value of the goods meets the requirement set out in subsection (2).

Requirement for accepting transaction value where purchaser and vendor related

(2) For the purposes of subparagraph (1)(d)(ii), the transaction value of any imported goods being appraised shall, taking into consideration any relevant factors including, without limiting the generality of the foregoing, such factors as may be prescribed and prescribed differences, closely approximate one of the following values that is in respect of goods exported at the same or substantially the same time as the goods being appraised and is the value for duty of the goods to which it relates:

(a) the transaction value of identical goods or similar goods in respect of a sale of those goods for export to Canada between a vendor and purchaser who are not related persons at the time of the sale;

(b) the deductive value in respect of identical goods or similar goods; or

(c) the computed value in respect of identical goods or similar goods.

Determination of transaction value

(3) The transaction value, in respect of the sale of any goods for export to Canada by a vendor to a purchaser in Canada, shall be determined by ascertaining the price paid or payable for the goods in respect of the sale and adjusting the price paid or payable in accordance with subsection (4), and where an amount that would otherwise have been added to the price paid or payable in accordance with subsection (4) is not so added for the reason that it cannot be determined on the basis of

au vendeur, sauf s'il a été tenu compte de cette ristourne dans le prix payé ou à payer ou si ce prix peut être ajusté conformément au sous-alinéa (4)a)(v);

d) l'acheteur et le vendeur ne sont pas liés au moment de la vente des marchandises pour l'exportation ou, s'ils le sont,

(i) soit que le lien qui les unit n'a pas influencé le prix payé ou à payer,

(ii) soit que l'importateur a démontré que la valeur transactionnelle des marchandises à évaluer répond aux exigences visées au paragraphe (2).

(2) Pour l'application du sous-alinéa (1)d)(ii), la valeur transactionnelle des marchandises à évaluer doit, compte tenu des facteurs pertinents, notamment des facteurs et différences réglementaires, être très proche de l'une des valeurs ci-après prise comme valeur en douane d'autres marchandises qui ont été exportées à la même date ou approximativement à la même date que les marchandises à évaluer:

Caractère acceptable de la valeur transactionnelle dans le cas où le vendeur et l'acheteur sont des personnes liées

a) la valeur transactionnelle de marchandises identiques ou semblables vendues pour l'exportation au Canada par un vendeur à un acheteur avec qui il n'est pas lié au moment de la vente;

b) la valeur de référence de marchandises identiques ou semblables;

c) la valeur reconstituée de marchandises identiques ou semblables.

(3) Dans le cas d'une vente de marchandises pour l'exportation au Canada à un acheteur qui s'y trouve, la valeur transactionnelle est le prix payé ou à payer, ajusté conformément au paragraphe (4). Si cet ajustement n'est pas possible en raison du fait qu'un élément qui aurait dû être ajouté au prix n'a pu être déterminé à partir de renseignements suffisants, la valeur transactionnelle ne peut être déterminée.

Détermination de la valeur transactionnelle

sufficient information, the transaction value of the goods cannot be determined.

Adjustment of
price paid or
payable

(4) The price paid or payable, in respect of the sale of any goods for export to Canada by a vendor to a purchaser in Canada, shall be adjusted

(a) by adding thereto amounts, to the extent that each such amount is not otherwise included in the price paid or payable for the goods and is determined on the basis of sufficient information, equal to

(i) commissions in respect of the goods incurred by the purchaser, other than fees paid or payable by the purchaser to his agent for the service of representing him abroad in respect of the sale,

(ii) the packing costs and charges incurred by the purchaser in respect of the goods, including the cost of cartons, cases and other containers and coverings that are treated for customs purposes as being part of the imported goods and all expenses of packing incident to placing the goods in the condition in which they are shipped to Canada,

(iii) the value of any of the following goods and services, determined in the manner prescribed, that are supplied, directly or indirectly, by the purchaser free of charge or at a reduced cost for use in connection with the production and sale for export of the imported goods, apportioned to the imported goods in a reasonable manner and in accordance with generally accepted accounting principles:

(A) materials, components, parts and other goods incorporated in the imported goods,

(B) tools, dies, moulds and other goods utilized in the production of the imported goods,

(C) any materials consumed in the production of the imported goods, and

(D) engineering, development work, art work, design work, plans and sketches undertaken elsewhere

(4) Dans le cas d'une vente de marchandises pour l'exportation au Canada à un acheteur qui s'y trouve, le prix payé ou à payer est ajusté

Ajustement du
prix payé ou à
payer

a) en y ajoutant, dans la mesure où ils n'ont pas été inclus et où ils sont calculés à partir de renseignements suffisants, les montants représentant:

(i) les commissions relatives aux marchandises et engagées par l'acheteur, à l'exclusion des sommes versées ou à verser par celui-ci à son mandataire à l'étranger à l'occasion de l'achat,

(ii) les coûts et frais d'emballage relatifs aux marchandises et engagés par l'acheteur, y compris le prix des cartons, caisses et autres emballages considérés à des fins douanières comme faisant partie intégrante des marchandises importées, et les frais accessoires de conditionnement de celles-ci en vue de leur expédition au Canada,

(iii) la valeur, déterminée de façon réglementaire et imputée d'une manière raisonnable et conforme aux principes de comptabilité généralement acceptés aux marchandises importées, des produits et services ci-après, fournis directement ou indirectement par l'acheteur, sans frais ou à coût réduit, et utilisés lors de la production et de la vente pour l'exportation des marchandises importées:

(A) en matières, composants, pièces et autres marchandises incorporés dans les marchandises importées,

(B) outils, matrices, moules et autres marchandises utilisés pour la production des marchandises importées,

(C) matières consommées dans la production des marchandises importées,

(D) travaux d'ingénierie, d'étude, d'art, d'esthétique industrielle, plans et croquis exécutés à l'étranger et nécessaires pour la production des marchandises importées,

than in Canada and necessary for the production of the imported goods,

(iv) royalties and licence fees, including payments for patents, trademarks and copyrights, in respect of the imported goods that the purchaser must pay, directly or indirectly, as a condition of the sale of the goods for export to Canada, exclusive of charges for the right to reproduce the imported goods in Canada,

(v) the value of any part of the proceeds of any subsequent resale, disposal or use of the goods by the purchaser that accrues or is to accrue, directly or indirectly, to the vendor, and

(vi) the costs of transportation and insurance of, and the loading, unloading and handling charges and other charges and expenses associated with the transportation of, the imported goods until the goods have left the country of export, if such costs, charges and expenses are paid or payable, directly or indirectly to or for the benefit of the vendor;

(b) by deducting therefrom amounts, to the extent that each such amount is otherwise included in the price paid or payable for the goods, equal to

(i) the costs of transportation and insurance of, and the loading, unloading and handling charges and other charges and expenses associated with the transportation of, the imported goods from the time the goods have left the country of export, other than any cost, charge or expense referred to in clause (ii)(B), and

(ii) any of the following costs, charges or expenses if the cost, charge or expense is identified separately from the balance of the price paid or payable for the goods:

(A) any reasonable cost, charge or expense that is incurred for the construction, erection, assembly or maintenance of, or technical assist-

(iv) les redevances et les droits de licence relatifs aux marchandises importées, y compris les paiements afférents aux brevets d'invention, marques de commerce et droits d'auteur, que l'acheteur est tenu d'acquitter directement ou indirectement en tant que condition de la vente des marchandises pour l'exportation au Canada, à l'exclusion des frais afférents au droit de reproduction de ces marchandises au Canada,

(v) la valeur de toute partie du produit de toute revente, disposition ou utilisation ultérieure par l'acheteur des marchandises importées, qui revient ou doit revenir, directement ou indirectement, au vendeur,

(vi) les coûts d'assurance et de transport des marchandises importées jusqu'à leur départ du pays d'exportation ainsi que les frais de chargement, de déchargement, de manutention et autres frais connexes à ce transport, à condition que ces coûts et frais soient payés ou payables directement ou indirectement au vendeur ou à son profit;

b) en en retranchant, dans la mesure où ils ont été inclus, les montants représentant:

(i) les coûts d'assurance et de transport des marchandises importées depuis leur départ du pays d'exportation ainsi que les frais de chargement, de déchargement, de manutention et autres frais connexes à ce transport, à l'exclusion des coûts et frais visés à la disposition (ii)(B),

(ii) les frais suivants lorsqu'ils sont identifiés comme constituant un élément à part du prix payé ou à payer:

(A) les coûts et frais raisonnables de construction, d'installation, d'assemblage ou d'entretien des marchandises après leur importation, ou des services d'assistance technique dont elles font l'objet après leur importation,

(B) les coûts et frais raisonnables, y compris les coûts et frais connexes,

ance provided in respect of, the goods after the goods are imported, (B) any reasonable cost, charge or expense that is incurred in respect of the transportation or insurance 5 of the goods within Canada and any reasonable cost, charge or expense associated therewith, and (C) any duties and taxes paid or payable by reason of the importa- 10 tion of the goods or sale of the goods in Canada, including, without limiting the generality of the foregoing, any duties or taxes levied on the goods under the *Customs* 15 *Tariff*, the *Excise Tax Act*, the *Excise Act*, the *Anti-Dumping Act* or any other law relating to customs; and

(c) by disregarding any rebate of, or 20 other decrease in, the price paid or payable for the goods that is made or otherwise effected after the goods are imported.

(5) Where the transaction value, in 25 respect of the sale of any goods for export to Canada by a vendor to a purchaser in Canada, cannot be determined or any of the requirements set out in subsection (1) or (2) cannot be met, the value for duty of 30 the goods cannot be appraised under this section.

(6) The Governor in Council may make regulations

(a) prescribing, for the purposes of sub- 35 section (2), factors and differences that shall be taken into consideration in determining whether the transaction value of any imported goods being appraised closely approximates another 40 value referred to in that subsection; and (b) prescribing the manner of determining the value of the goods and services referred to in subparagraph (4)(a)(iii).

38. (1) Subject to subsections (2) to 45 (4), where the value for duty of imported goods cannot be appraised under section 37, the value for duty of the goods is the transaction value of identical goods, in

de transport ou d'assurance des marchandises à l'intérieur du Canada,

(C) les droits et taxes payés ou à payer en raison de l'importation ou 5 de la vente des marchandises au Canada et, notamment, les droits ou taxes perçus sur ces marchandises en vertu du *Tarif des douanes*, de la *Loi sur la taxe d'accise*, de la 10 *Loi sur l'accise*, de la *Loi antidumping* ou de toute autre Loi concernant les douanes;

c) étant entendu qu'il n'est tenu aucun compte de toute remise ou réduction de 15 prix effectuée après l'importation des marchandises.

(5) Dans le cas de la vente des marchandises pour l'exportation au Canada à un acheteur qui s'y trouve, la valeur en 20 douane des marchandises ne peut pas être déterminée par application du présent article si leur valeur transactionnelle est indéterminable ou si l'une des exigences visées au paragraphe (1) ou (2) n'est pas 25 remplie.

(6) Le gouverneur en conseil peut prendre des règlements en vue de:

a) préciser, pour l'application du paragraphe (2), les facteurs et les différences 30 dont il faut tenir compte pour déterminer si la valeur transactionnelle des marchandises à évaluer est très proche d'une autre valeur visée à ce paragraphe; b) fixer la méthode à utiliser pour 35 déterminer la valeur des marchandises et services visés au sous-alinéa (4)a)(iii).

38. (1) Sous réserve des paragraphes (2) et (4), la valeur en douane des marchandises importées, dans les cas où elle 40 n'est pas déterminable par application de l'article 37, est la valeur transactionnelle

Rejection of transaction value

Regulations

Transaction value of identical goods as value for duty

Rejet de la valeur transactionnelle

Règlements

Fixation de la valeur en douane fondée sur la valeur transactionnelle de marchandises identiques

respect of a sale of those goods for export to Canada by a vendor to a purchaser in Canada, if that transaction value is the value for duty of the identical goods and the identical goods were exported at the same or substantially the same time as the goods being appraised and were sold under the following conditions:

- (a) to a purchaser at the same or substantially the same trade level as the purchaser of the goods being appraised; and
- (b) in the same or substantially the same quantities as the goods being appraised.

(2) Where the value for duty of any imported goods being appraised cannot be determined under subsection (1) for the reason that identical goods were not sold under the conditions described in paragraphs (1)(a) and (b), there shall be substituted therefor, in the application of subsection (1), identical goods sold under any of the following conditions:

- (a) to a purchaser at the same or substantially the same trade level as the purchaser of the goods being appraised but in quantities different from the quantities in which those goods were sold;
- (b) to a purchaser at a trade level different from that of the purchaser of the goods being appraised but in the same or substantially the same quantities as the quantities in which those goods were sold; or
- (c) to a purchaser at a trade level different from that of the purchaser of the goods being appraised and in quantities different from the quantities in which those goods were sold.

(3) For the purposes of determining the value for duty of any imported goods being appraised under subsection (1), the transaction value of identical goods shall be adjusted by adding thereto or deducting therefrom, as the case may be, amounts to account for

de marchandises identiques vendues pour l'exportation au Canada à un acheteur qui s'y trouve, et exportées à la même date ou approximativement à la même date que les marchandises à évaluer, pourvu que cette valeur transactionnelle soit la valeur en douane des marchandises identiques et que la vente de celles-ci et la vente des marchandises à évaluer soient réalisées approximativement au même niveau commercial et portent sur une quantité égale ou à peu près égale.

(2) En l'absence d'une vente de marchandises identiques répondant aux conditions fixées au paragraphe (1), la valeur en douane des marchandises importées est, pour l'application du paragraphe (1), déterminée par référence à des marchandises identiques dont la vente est, par rapport à celle des marchandises à évaluer, réalisée:

- a) soit au même niveau commercial ou approximativement au même niveau commercial mais pour une quantité différente,
- b) soit à un niveau commercial différent mais pour une quantité égale ou à peu près égale,
- c) soit à un niveau commercial différent pour une quantité différente.

(3) Pour l'application du paragraphe (1), la valeur transactionnelle de marchandises identiques est ajustée en y ajoutant ou en en retranchant, selon le cas, les montants représentant:

- a) les différences notables du point de vue commercial, découlant de différen-

Where identical goods sold under different conditions

Adjustment of transaction value of identical goods

Cas de marchandises identiques vendues dans des conditions différentes

Ajustement de la valeur transactionnelle de marchandises identiques

(a) commercially significant differences between the costs, charges and expenses referred to in subparagraph 37(4)(a)(vi) in respect of the identical goods and those costs, charges and expenses in respect of the goods being appraised that are attributable to differences in distances and modes of transport, and

(b) where the transaction value is in respect of identical goods sold under the conditions described in any of paragraphs (2)(a) to (c), differences in the trade levels of the purchasers of the identical goods and the goods being appraised or the quantities in which the identical goods and the goods being appraised were sold or both, as the case may be,

if each such amount and the adjustment therefor can be determined on the basis of sufficient information, and where any such amount or the adjustment therefor cannot be so determined, the value for duty of the goods being appraised cannot be determined on the basis of the transaction value of those identical goods under this section.

Selection of lowest transaction value of identical goods

(4) Where, in relation to any imported goods being appraised, there are two or more transaction values of identical goods that meet all the requirements set out in subsections (1) and (3) or, where there is no such transaction value but there are two or more transaction values of identical goods sold under the conditions described in any of paragraphs (2)(a) to (c) that meet all the requirements set out in this section that are applicable by virtue of subsection (2), the value for duty of the goods being appraised shall be determined on the basis of the lowest such transaction value.

Transaction value of similar goods as value for duty

39. (1) Subject to subsections (2) and 38(2) to (4), where the value for duty of imported goods cannot be appraised under section 38, the value for duty of the goods is the transaction value of similar goods, in respect of a sale of those goods for export to Canada by a vendor to a purchaser in Canada, if that transaction value is the value for duty of the similar goods and the

ces dans les distances et les modes de transport, entre les marchandises identiques et les marchandises à évaluer en ce qui concerne les coûts et frais visés à l'alinéa 37(4)a)(vi);

b) les différences entre les marchandises identiques et les marchandises à évaluer découlant, dans les situations visées aux alinéas (2)a) à c), soit du facteur niveau commercial, soit du facteur quantité, soit de l'un et l'autre facteur;

au cas où des montants et l'ajustement qui en résulte ne sont pas déterminables sur la base de renseignements suffisants, la valeur en douane des marchandises à évaluer ne peut pas se fonder sur la valeur transactionnelle de marchandises identiques par application du présent article.

(4) Lorsqu'il existe, dans l'évaluation des marchandises importées, plusieurs valeurs transactionnelles afférentes soit à des marchandises identiques qui remplissent les conditions visées aux paragraphes (1) et (3) soit, à défaut, à des marchandises qui remplissent l'une des conditions visées aux alinéas (2)a) à c) en plus des autres exigences prévues par le présent article et applicables en vertu du paragraphe (2), la valeur en douane des marchandises à évaluer se fonde sur la moindre de ces valeurs transactionnelles.

Choix de la moindre valeur transactionnelle de marchandises identiques

39. (1) Sous réserve des paragraphes (2) et 38(2) à (4), la valeur en douane des marchandises importées, dans les cas où elle n'est pas déterminable par application de l'article 38, est la valeur transactionnelle de marchandises semblables vendues pour l'exportation au Canada à un acheteur qui s'y trouve, et exportées à la même date où approximativement à la même

Valeur en douane fondée sur la valeur transactionnelle de marchandises semblables

similar goods were exported at the same or substantially the same time as the goods being appraised and were sold under the following conditions:

- (a) to a purchaser at the same or substantially the same trade level as the purchaser of the goods being appraised; and
- (b) in the same or substantially the same quantities as the goods being appraised.

date que les marchandises à évaluer, pourvu d'une part que cette valeur transactionnelle soit la valeur en douane des marchandises semblables et d'autre part que la vente de celles-ci et la vente des marchandises à évaluer soient réalisées approximativement au même niveau commercial et portent sur une quantité égale ou à peu près égale.

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Application of section 38

(2) Subsections 38(2) to (4) apply to this section in respect of similar goods and wherever in those subsections the expression "identical goods" is referred to, there shall be substituted therefor the expression "similar goods".

(2) Les paragraphes 38(2) à (4) s'appliquent aux situations prévues au présent article et, en ce qui a trait aux marchandises semblables, l'expression «marchandises identiques» figurant à ces paragraphes désigne alors des marchandises semblables.

Applicabilité de l'article 38

Deductive value as value for duty

40. (1) Subject to subsections (5) and 36(3), where the value for duty of imported goods cannot be appraised under section 39, the value for duty of the goods is the deductive value in respect of the goods.

40. (1) Sous réserve des paragraphes (5) et 36(3), la valeur en douane des marchandises importées est, dans les cas où elle n'est pas déterminable par l'application de l'article 39, leur valeur de référence.

Valeur en douane fondée sur la valeur de référence

Determination of deductive value

(2) The deductive value, in respect of any imported goods being appraised, is

- (a) where the goods being appraised, identical goods or similar goods are sold in Canada in the condition in which they were imported at the same or substantially the same time as the time of importation of the goods being appraised, the price per unit, in respect of sales described in subsection (3), determined in accordance with that subsection and adjusted in accordance with subsection (4) at which the greatest number of units of the goods being appraised, identical goods or similar goods are so sold;

- (b) where the goods being appraised, identical goods or similar goods are sold in Canada in the condition in which they were imported before the expiration of ninety days after the importation of the goods being appraised but are not so sold at the same or substantially the same time as the time of that importation, the price per unit, in respect of

(2) La valeur de référence des marchandises importées à évaluer est fonction du prix unitaire, déterminé conformément au paragraphe (3) et ajusté conformément au paragraphe (4), de marchandises de référence choisies selon les modalités suivantes:

Détermination de la valeur de référence

- a) lorsque, à la date de l'importation des marchandises à évaluer ou approximativement à cette date, ces marchandises, des marchandises identiques ou semblables sont vendues au Canada dans l'état où elles ont été importées, le prix unitaire de vente de celles-ci au moment sus-indiqué est retenu;

- b) lorsque, à une date, ou approximativement à une date, qui ne coïncide pas avec celle de l'importation de marchandises à évaluer mais qui se situe dans un délai de quatre-vingt-dix jours après cette importation, ces marchandises, des marchandises identiques ou semblables sont vendues au Canada dans l'état où elles ont été importées, le prix unitaire de celles-ci dès leur vente est retenu;

sales described in subsection (3), determined in accordance with that subsection and adjusted in accordance with subsection (4) at which the greatest number of units of the goods being appraised, identical goods or similar goods are so sold at the earliest date after the importation of the goods being appraised; or

(c) where the goods being appraised, identical goods or similar goods are not sold in Canada in the circumstances described in paragraph (a) or (b) but the goods being appraised, after being assembled, packaged or further processed in Canada, are sold in Canada before the expiration of one hundred and eighty days after the importation thereof and the importer of the goods being appraised requests that this paragraph be applied in the determination of the value for duty of those goods, the price per unit, in respect of sales described in subsection (3), determined in accordance with that subsection and adjusted in accordance with subsection (4) at which the greatest number of units of the goods being appraised are so sold.

c) lorsque ces marchandises, des marchandises identiques ou semblables ne sont pas vendues au Canada dans les situations visées aux alinéas a) ou b) et que les marchandises à évaluer, après assemblage, emballage ou transformation complémentaire, sont vendues au Canada dans les cent quatre-vingts jours de leur importation, si l'importateur des marchandises à évaluer demande l'application du présent alinéa en vue de déterminer leur valeur en douane, le prix unitaire de vente des marchandises à évaluer est retenu.

Price per unit

(3) For the purposes of subsection (2), the price per unit, in respect of any goods being appraised, identical goods or similar goods, shall be determined by ascertaining the unit price, in respect of sales of the goods at the first trade level after importation thereof to persons who

(a) are not related to the persons from whom they buy the goods at the time the goods are sold to them, and

(b) have not supplied, directly or indirectly, free of charge or at a reduced cost for use in connection with the production and sale for export of the goods any of the goods or services referred to in subparagraph 37(4)(a)(iii),

at which the greatest number of units of the goods is sold where, in the opinion of the Deputy Minister or any person authorized by him, a sufficient number of such

(3) Pour l'application du paragraphe (2), le prix unitaire des marchandises à évaluer, de marchandises identiques ou de marchandises semblables désigne le prix unitaire auquel ces marchandises sont vendues, au premier niveau commercial après leur importation, à des personnes

a) qui ne sont pas liées, au moment de la vente, aux vendeurs des marchandises en question et

b) qui n'ont fourni, directement ou indirectement, sans frais ou à coût réduit, aucun des produits ou services visés au sous-alinéa 37(4)a)(iii) pour être utilisés lors de la production et de la vente à l'exportation des marchandises en question,

lors de ventes qui totalisent le plus grand nombre de ces marchandises et qui, de l'avis du sous-ministre ou de son déléga-

Prix unitaire

sales have been made to permit a determination of the price per unit of the goods.

(4) For the purposes of subsection (2), the price per unit, in respect of any goods being appraised, identical goods or similar goods, shall be adjusted by deducting therefrom an amount equal to the aggregate of

(a) an amount, determined in the manner prescribed, equal to

- (i) the amount of commission generally earned on a unit basis, or
- (ii) the amount for profit and general expenses, including all costs of marketing the goods, considered together as a whole, that is generally reflected on a unit basis

in connection with sales in Canada of goods of the same class or kind as those goods;

(b) reasonable costs, charges and expenses that are incurred in respect of the transportation and insurance of the goods within Canada and reasonable costs, charges and expenses associated therewith, to the extent that an amount for such costs, charges and expenses is not deducted in respect of general expenses under paragraph (a);

(c) the costs, charges and expenses referred to in subparagraph 37(4)(b)(i), incurred in respect of the goods, to the extent that an amount for such costs, charges and expenses is not deducted in respect of general expenses under paragraph (a);

(d) any duties and taxes paid or payable by reason of the importation of the goods or sale of the goods in Canada, including, without limiting the generality of the foregoing, any duties or taxes levied on the goods under the *Customs Tariff*, the *Excise Tax Act*, the *Excise Act*, the *Anti-Dumping Act* or any other law relating to customs, to the extent that an amount for such duties and taxes is not deducted in respect of general expenses under paragraph (a); and

(e) where paragraph (2)(c) applies, the amount of the value added to the goods

taire, sont suffisamment nombreuses pour permettre la détermination d'un tel prix.

(4) Pour l'application du paragraphe (2), le prix unitaire qui y est visé est ajusté en en retranchant:

a) la somme, déterminée de la manière prescrite, représentant

- (i) soit le montant de la commission normale payée sur une base unitaire,
- (ii) soit le montant pour les bénéfices et frais généraux, considérés comme un tout et comprenant tous les frais de commercialisation, normalement inclus dans le prix unitaire,

afférent à la vente au Canada de marchandises de même nature ou de même espèce que les marchandises en question;

b) les coûts et frais raisonnables engagés, y compris les coûts et frais connexes, de transport et d'assurance des marchandises à l'intérieur du Canada, dans la mesure où ils ne sont pas déduits avec les frais généraux visés à l'alinéa a);

c) les coûts et frais engagés afférents aux marchandises en question et visés au sous-alinéa 37(4)b)(i), dans la mesure où ils ne sont pas déduits avec les frais généraux visés à l'alinéa a);

d) les droits et taxes visés à la disposition 37(4)b)(ii)(C), dans la mesure où ils ne sont pas déduits avec les frais généraux visés à l'alinéa a);

e) dans le cas visé à l'alinéa (2)c), la valeur ajoutée aux marchandises en question par suite de leur assemblage, emballage ou transformation complémentaire au Canada et déterminée sur la base de renseignements suffisants.

Ajustement du prix unitaire

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that is attributable to the assembly, packaging or further processing in Canada of the goods, if that amount is determined on the basis of sufficient information.

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Rejection of
deductive value

(5) Where an amount referred to in paragraph (4)(e) in respect of any goods being appraised cannot be determined on the basis of sufficient information, the value for duty of the goods cannot be determined on the basis of the deductive value thereof under paragraph (2)(c).

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(5) Si la valeur visée à l'alinéa (4)e n'est pas déterminable à partir de renseignements suffisants, la valeur en douane des marchandises à évaluer ne peut pas se fonder sur leur valeur de référence par application de l'alinéa (2)c).

Rejet de la
valeur de
référence

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Regulations

(6) The Governor in Council may make regulations prescribing the manner of determining an amount equal to the amount of commission or the amount for profit and general expenses referred to in paragraph (4)(a).

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(6) Le gouverneur en conseil peut, par règlement, fixer la méthode à utiliser pour déterminer la somme visée à l'alinéa (4)a et représentant le montant de la commission ou le montant des bénéfices et frais généraux.

Règlements

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Computed
value as value
for duty

41. (1) Subject to subsection 36(3), where the value for duty of imported goods cannot be appraised under section 40, the value for duty of the goods is the computed value in respect of the goods.

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41. (1) Sous réserve du paragraphe 36(3), la valeur en douane des marchandises importées, dans le cas où elle n'est pas déterminable par application de l'article 40, est leur la valeur reconstituée.

Valeur
imposable sur
la valeur
reconstituée

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Determination
of computed
value

(2) The computed value, in respect of any imported goods being appraised, is the aggregate of amounts equal to

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(2) La valeur reconstituée des marchandises importées à évaluer est la somme des éléments suivants:

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(a) the costs, charges and expenses incurred in respect of, or the value of,

a) des coûts et frais engagés ou de la valeur:

(i) materials employed in producing the goods being appraised, and

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(i) des matières utilisées dans la production des marchandises à évaluer d'une part,

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(ii) the production or other processing of the goods being appraised,

(ii) d'opérations de production, ou autres, des marchandises à évaluer d'autre part,

determined in the manner prescribed, including, without limiting the generality of the foregoing,

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déterminés de manière réglementaire et incluant notamment

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(iii) the costs, charges and expenses referred to in subparagraph 37(4)(a)(ii),

(iii) les coûts et frais visés au sous-alinéa 37(4)a(ii),

(iv) the value of any of the goods and services referred to in subparagraph 37(4)(a)(iii), determined and apportioned to the goods being appraised as referred to in that subparagraph,

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(iv) la valeur des marchandises et services visés au sous-alinéa 37(4)a(iii) déterminée et imputée aux marchandises de la manière visée dans ce sous-alinéa, même lorsqu'ils sont fournis sans frais ou à coût réduit,

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whether or not such goods and services have been supplied free of charge or at a reduced cost, and

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(v) les coûts et frais, engagés par le producteur, des travaux d'ingénierie, d'étude, d'art, d'esthétique industrielle, de plans ou croquis exécutés

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(v) the costs, charges and expenses incurred by the producer in respect of engineering, development work, art

work, design work, plans or sketches undertaken in Canada that were supplied, directly or indirectly, by the purchaser of the goods being appraised for use in connection with the production and sale for export of those goods, apportioned to the goods being appraised as referred to in subparagraph 37(4)(a)(iii); and

(b) the amount, determined in the manner prescribed, for profit and general expenses, considered together as a whole, generally reflected in sales for export to Canada of goods of the same class or kind as the goods being appraised made by the producers of the goods to purchasers in Canada who are not related to the producers from whom they buy the goods at the time the goods are sold to them.

Definition of
"general
expenses"

(3) For the purposes of this section, "general expenses" means the direct and indirect costs, charges and expenses of producing and selling goods for export, other than the costs, charges and expenses referred to in paragraph (2)(a).

Exclusion from
computed value

(4) Notwithstanding paragraph (2)(a), engineering, development work, art work, design work, plans or sketches referred to in subparagraph (2)(a)(v) shall not be included in determining the computed value in respect of any goods being appraised except under that subparagraph.

Regulations

(5) The Governor in Council may make regulations prescribing the manner of determining

- (a) the costs, charges and expenses incurred in respect of, or the value of, the materials and processing referred to in paragraph (2)(a); and
- (b) the amount for profit and general expenses referred to in paragraph (2)(b).

Residual basis
of appraisal

42. Where the value for duty of imported goods cannot be appraised under section 41, it shall be appraised on the basis of

- (a) a value derived from the methods of valuation set out in sections 37 to 41,

au Canada et fournis, directement ou indirectement, par l'acheteur des marchandises en vue de leur production et de leur vente à l'exportation, imputés aux marchandises à évaluer, de la manière visée au sous-alinéa 37(4)a)(iii);

- b) le montant, calculé de manière réglementaire, de l'ensemble des bénéfices et frais généraux, généralement engagés dans les ventes de marchandises de même nature ou de même espèce que les marchandises à évaluer, effectuées pour l'exportation au Canada à des acheteurs qui s'y trouvent et qui ne sont pas liés, à la date de la vente, aux producteurs de qui ils achètent les marchandises.

Définition des
«frais généraux»

(3) Pour l'application du présent article, «frais généraux» désigne les coûts et frais directs et indirects de production et de vente des marchandises pour l'exportation, qui ne sont pas visés à l'alinéa (2)a).

Exclus de la
valeur
reconstituée

(4) Nonobstant l'alinéa (2)a), les marchandises et services visés au sous-alinéa (2)a)(v) ne sont pas inclus dans le calcul de la valeur reconstituée de marchandises, sauf dans le cadre de ce sous-alinéa.

Règlements

(5) Le gouverneur en conseil peut prendre des règlements fixant la méthode à utiliser pour déterminer:

- a) les coûts et frais engagés ou la valeur des matières et des opérations de production, visés à l'alinéa (2)a);
- b) le montant des bénéfices et frais généraux, visé à l'alinéa (2)b).

Dernière base
de l'évaluation

42. Lorsqu'elle ne peut être déterminée conformément à l'article 41, la valeur en douane des marchandises importées se fonde sur les deux éléments suivants:

- a) une valeur obtenue en utilisant les méthodes d'évaluation prévues par les

interpreted in a flexible manner and reasonably adjusted to the extent necessary to arrive at a value for duty of the goods; and

(b) information available in Canada. 5

Value for duty
in Canadian
currency

43. Where the value for duty of imported goods is expressed in a currency of a country other than Canada, the value for duty of the goods shall be computed in Canadian currency in accordance with 10 regulations made pursuant to section 13.1 of the *Currency and Exchange Act*.

Goods exported
to Canada
through
another country

44. (1) For the purposes of sections 35 to 43, where goods are exported to Canada from any country but pass in transit 15 through another country, the goods shall, subject to such terms and conditions as may be prescribed, be deemed to be shipped directly to Canada from the first mentioned country. 20

Regulations

(2) The Governor in Council may make regulations prescribing the terms and conditions subject to which goods shall, under subsection (1), be deemed to be shipped directly to Canada from any country.” 25

articles 37 à 41, appliquées avec suffisamment de souplesse pour permettre de déterminer la valeur en douane;

b) les données disponibles au Canada.

43. Lorsque la valeur en douane des marchandises importées est exprimée en monnaie d'un pays autre que la Canada, elle est convertie en monnaie canadienne conformément aux règlements pris en application de l'article 13.1 de la *Loi sur 10 la monnaie et les changes*.

5 Valeur en
douane en
monnaie
canadienne

44. (1) Pour l'application des articles 35 à 43, lorsque des marchandises provenant d'un pays sont exportées au Canada en transitant par un autre pays, sous réserve 15 de modalités réglementaires, elles sont considérées comme ayant été expédiées directement au Canada à partir du premier pays.

Marchandises
exportées au
Canada via un
autre pays

(2) Le gouverneur en conseil peut, par 20 règlements, fixer les modalités selon lesquelles des marchandises sont réputées, en application du paragraphe (1), être expédiées directement au Canada en provenance de tout pays.» 25

REGULATIONS RESPECTING THE DETERMINATION OF THE VALUE FOR DUTY OF IMPORTED GOODS

SHORT TITLE

1. These Regulations may be cited as the *Valuation for Duty Regulations*.

Interpretation

2. In these Regulations, “Act” means the *Customs Act*.

Determination of the Value for Duty of Imported Goods

3. For the purposes of subsection 37(2) of 30 the Act, in determining whether the transaction value of any imported goods being appraised closely approximates another value referred to in that subsection, there shall be taken into consideration

(a) the following factors:

RÈGLEMENT SUR LE CALCUL DE LA VALEUR EN DOUANE DES MARCHANDISES IMPORTÉES

TITRE ABRÉGÉ

1. *Règlement sur le calcul de la valeur en douane*.

Interprétation

2. Dans le présent règlement, «Loi» s'entend au sens de la *Loi sur les douanes*.

Calcul de la valeur en douane des marchandises importées

3. Pour l'application du paragraphe 37(2) 30 de la Loi, en vue de déterminer si la valeur transactionnelle des marchandises importées à évaluer est très proche d'une autre valeur qui y est mentionnée, sont pris en considération, cumulativement,

a) tous les facteurs suivants:

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- (i) the nature of the goods being appraised,
 - (ii) the nature of the industry that produces the goods being appraised,
 - (iii) the season in which the goods being appraised are imported, and 5
 - (iv) whether a difference in values is commercially significant; and
 - (b) any difference, in respect of the sales being compared, relating to 10
 - (i) the trade levels at which the sales take place,
 - (ii) the quantity levels of the sales,
 - (iii) any of the amounts referred to in paragraphs 37(4)(a) to (c) of the Act, 15 or
 - (iv) costs, charges or expenses incurred by a vendor when he sells to a purchaser to whom he is not related that are not incurred when a vendor sells to a purchaser to whom he is related, 20
 if that difference is determined on the basis of sufficient information.
4. For the purposes of subparagraph 37(4)(a)(iii) of the Act, the value of the goods and services referred to in that subparagraph that are supplied directly or indirectly by the purchaser of any goods being appraised shall be determined
- (a) in the case of materials, components, 30 parts and other goods incorporated in the goods being appraised or any materials consumed in the production of the goods being appraised, by ascertaining
 - (i) where the goods were acquired by 35 the purchaser from a person who was not related to him at the time the goods were acquired, the cost of acquisition of the goods,
 - (ii) where the goods were acquired by 40 the purchaser from a person related to him at the time the goods were acquired who did not produce the goods, the cost of acquisition of the goods incurred by the person related to the purchaser, or 45
 - (iii) where the goods were produced by the purchaser or a person related to him
- (i) la nature des marchandises à évaluer,
 - (ii) la nature de la branche de production qui produit les marchandises à évaluer, 5
 - (iii) la saison pendant laquelle les marchandises à évaluer sont importées,
 - (iv) la différence de valeur est ou n'est pas notable au point de vue commercial;
 - b) une différence relevée dans la comparaison des ventes et portant sur un des éléments suivants: 10
 - (i) les niveaux commerciaux auxquels les ventes s'effectuent,
 - (ii) les quantités vendues, 15
 - (iii) un des montants visés aux alinéas 37(4)a) à c) de la Loi,
 - (iv) les coûts et frais engagés par le vendeur dans une vente entre personnes non liées et non engagés par le vendeur 20 dans une vente entre personnes liées,
 à condition que cette différence soit déterminée à partir de renseignements suffisants.
4. Pour l'application du sous-alinéa 25 37(4)a)(iii) de la Loi, la valeur des marchandises et services qui y sont mentionnés et qui sont fournis directement ou indirectement par l'acheteur de marchandises à évaluer est,
- a) dans le cas des matières, composants, 30 pièces et autres marchandises incorporés dans les marchandises à évaluer ou des matières consommées dans la production de ces marchandises, un des éléments suivants: 35
 - (i) leur coût d'acquisition, si l'acheteur les a acquis d'une personne avec qui il n'était pas lié à la date de l'acquisition,
 - (ii) leur coût d'acquisition, si l'acheteur les a acquis d'une personne avec qui il 40 était lié à la date de l'acquisition et qui ne les a pas produits,
 - (iii) leur coût de production, si ils ont été produits par l'acheteur ou par une personne avec qui il était lié au moment 45 de la production,
 majoré des deux éléments suivants:

at the time the goods were produced, the cost of production of the goods, and by adding thereto

(iv) the cost of transporting the goods to the place of production of the goods being appraised, and 5

(v) the value added to the goods by any repairs or modifications made to the goods after the goods were so acquired or produced; 10

(b) in the case of tools, dies, moulds, and other goods utilized in the production of the goods being appraised, by ascertaining

(i) where the goods were acquired or leased by the purchaser from a person who was not related to him at the time the goods were acquired or leased, the cost of acquisition or of the lease thereof, 15

(ii) where the goods were acquired or leased by the purchaser from a person related to him at the time the goods were acquired or leased who did not produce the goods, the cost of acquisition or of the lease thereof incurred by the person related to the purchaser, or 20

(iii) where the goods were produced by the purchaser or a person related to him at the time the goods were produced, the cost of production of the goods, 30

and by adding thereto

(iv) the cost of transporting the goods to the place of production of the goods being appraised, and

(v) the value added to the goods by any repairs or modifications made to the goods after the goods were so acquired, leased or produced, 35

and by deducting therefrom an amount to account for any previous use of the goods made after the goods were so acquired, leased or produced; and 40

(c) in the case of engineering, development work, art work, design work, plans and sketches undertaken elsewhere than in Canada and necessary for the production of the goods being appraised, by ascertaining

(iv) leur coût de transport jusqu'au lieu de production des marchandises à évaluer,

(v) la valeur qui leur a été ajoutée par suite de réparations ou de modifications faites après leur acquisition ou production; 5

b) dans le cas des outils, matrices, modules et autres marchandises utilisés pour la production des marchandises à évaluer, un des éléments suivants: 10

(i) leur coût d'acquisition ou de location, si l'acheteur les a acquis ou loués d'une personne avec qui il n'était pas lié au moment de l'acquisition ou de la location, 15

(ii) leur coût d'acquisition ou de location, si l'acheteur les a acquis ou loués d'une personne avec qui il était lié au moment de l'acquisition ou de la location et qui ne les a pas produits, 20

(iii) leur coût de production, s'ils ont été produits par l'acheteur ou par une personne avec qui il était lié au moment de la production, 25

majoré des deux éléments suivants:

(iv) leur coût de transport jusqu'au lieu de production des marchandises à évaluer,

(v) la valeur qui leur a été ajoutée par suite de réparations ou de modifications faites après leur acquisition, location ou production, 30

et en en déduisant un montant tenant compte de toute utilisation des marchandises postérieure à leur acquisition, location ou production; 35

c) dans le cas des travaux d'ingénierie, d'étude, d'art, d'esthétique industrielle, plans et croquis exécutés ailleurs qu'au Canada et nécessaires à la production des marchandises à évaluer, un des éléments suivants: 40

(i) leur coût d'acquisition ou de location, s'il s'agit de travaux, plans et croquis autres que ceux qui sont du domaine public, acquis ou loués par l'acheteur d'une personne avec qui il 45

(i) where the goods or services, other than work, plans and sketches that are available generally to the public, were acquired or leased by the purchaser from a person who was not related to him at the time the goods or services were acquired or leased, the cost of acquisition or of the lease thereof,

(ii) where the goods or services, other than work, plans and sketches that are available generally to the public, were acquired or leased by the purchaser from a person who was related to him at the time the goods or services were acquired or leased who did not produce the goods or services, the cost of acquisition or of the lease thereof incurred by the person related to the purchaser,

(iii) where the work, plans or sketches are available generally to the public, the cost to the public of obtaining copies of such work, plans or sketches, or

(iv) where the goods or services were produced by the purchaser or a person related to him at the time the goods or services were produced, the cost of production thereof.

5. For the purposes of applying paragraph 40(4)(a) of the Act in respect of the appraisal of imported goods, an amount equal to the amount of commission or the amount for profit and general expenses referred to in that paragraph shall be calculated on a percentage basis and determined on the basis of information prepared in a manner consistent with generally accepted accounting principles that is supplied

(a) by or on behalf of the importer of the goods being appraised; or

(b) where information supplied by or on behalf of the importer of the goods being appraised is not sufficient information, from an examination of sales in Canada of the narrowest group or range of goods of the same class or kind as the goods being appraised from which sufficient information can be obtained.

6. (1) For the purposes of paragraph 41(2)(a) of the Act, the costs, charges and

n'était pas lié au moment de l'acquisition ou de la location,

(ii) leur coût d'acquisition ou de location, s'il s'agit de travaux, plans et croquis autres que ceux qui sont du domaine public, acquis ou loués par l'acheteur d'une personne avec qui il était lié au moment de l'acquisition ou de la location et qui ne les a pas exécutés,

(iii) le coût des copies des travaux, plans ou croquis qui sont du domaine public,

(iv) leur coût de production ou d'exécution, s'il s'agit de marchandises produites ou de services exécutés par l'acheteur ou par une personne avec qui il était lié à la date de la production ou de l'exécution.

5. Pour l'application de l'alinéa 40(4)a) de la Loi en ce qui concerne l'évaluation des marchandises importées, la somme qui y est mentionnée et qui représente le montant de la commission ou le montant pour les bénéfices et frais généraux est un pourcentage calculé sur la base des renseignements établis d'une manière compatible avec les principes de comptabilité généralement admis

a) soit fournis par l'importateur des marchandises à évaluer ou en son nom;

b) soit tirés de l'examen des ventes au Canada de la plus proche catégorie ou gamme de marchandises de même nature ou de même espèce que celles à évaluer et sur laquelle des renseignements suffisants peuvent être obtenus, si les renseignements fournis par l'importateur ou pour son compte ne sont pas suffisants.

6. (1) Pour l'application de l'alinéa 41(2)a) de la Loi, les coûts et frais engagés

expenses incurred in respect of, or the value of, the materials and processing referred to in that paragraph for any goods being appraised shall be determined on the basis of

- (a) the commercial accounts of the producer of the goods being appraised, or
- (b) other sufficient information relating to the production of the goods being appraised

supplied by or on behalf of the producer of the goods and prepared in a manner consistent with the generally accepted accounting principles of the country of production of the goods being appraised.

(2) For the purposes of applying paragraph 41(2)(b) of the Act in respect of any goods being appraised, the amount for profit and general expenses referred to in that paragraph shall be calculated on a percentage basis and determined on the basis of information prepared in a manner consistent with generally accepted accounting principles of the country of production of the goods being appraised that is supplied

- (a) by or on behalf of the producer of the goods being appraised; or
- (b) where information supplied by or on behalf of the producer of the goods being appraised is not sufficient information, from an examination of sales for export to Canada of the narrowest group or range of goods of the same class or kind referred to in paragraph 41(2)(b) of the Act from which sufficient information can be obtained.

ou la valeur qui y sont mentionnés et qui représentent les matières et la transformation relativement aux marchandises à évaluer sont déterminés sur la base

- a) soit des comptes commerciaux du producteur des marchandises à évaluer,
- b) soit d'autres renseignements suffisants sur la production des marchandises à évaluer

fournis par le producteur des marchandises à évaluer ou en son nom et établis d'une manière compatible avec les principes de comptabilité généralement admis dans le pays de production des marchandises à évaluer.

(2) Pour l'application de l'alinéa 41(2)b) de la Loi en ce qui concerne les marchandises à évaluer, le montant qui y est mentionné et qui est destiné aux bénéfices et frais généraux est un pourcentage calculé sur la base des renseignements établis d'une manière compatible avec les principes de comptabilité généralement admis dans le pays de production des marchandises à évaluer, et

- a) soit fournis par le producteur des marchandises à évaluer ou en son nom;
- b) soit tirés d'un examen des ventes à l'exportation au Canada de la plus proche catégorie ou gamme de marchandises de même nature ou de même espèce visées à l'alinéa 41(2)b) de la Loi sur lesquelles des renseignements suffisants peuvent être obtenus, si les renseignements fournis par le producteur des marchandises à évaluer ou en son nom ne sont pas suffisants.

APPENDIX IV

APPEAL PROCEDURES WITH RESPECT TO AN APPRAISAL OF THE VALUE
FOR DUTY OF ANY GOODS: CUSTOMS ACT, SECTIONS 46 TO 50

46. (1) Subject to this section, a determination of the tariff classification or an appraisal of the value for duty of any goods, made at the time of their entry, is final and conclusive unless the importer, within ninety days of the date of entry, makes a written request in prescribed form and manner to a Dominion customs appraiser for a re-determination or a re-appraisal.

(2) A Dominion customs appraiser may re-determine the tariff classification or re-appraise the value for duty of any goods made at the time of their entry

- (a) in accordance with a request made pursuant to subsection (1), or
- (b) in any other case where he deems it advisable, within two years of the date of entry.

(3) Subject to subsection (4), a decision of a Dominion customs appraiser under this section is final and conclusive unless the importer, within ninety days of the date of the decision, makes a written request in prescribed form and manner to the Deputy Minister for a re-determination or a re-appraisal.

(4) The Deputy Minister may re-determine the tariff classification or re-appraise the value for duty of any goods

- (a) in accordance with a request made pursuant to subsection (3),
- (b) at any time, if the importer has made any misrepresentation or committed any fraud in making the entry of those goods,
- (c) at any time, to give effect to a decision of the Tariff Board, the Federal Court of Canada or the Supreme Court of Canada with respect to those goods, and
- (d) in any other case where he deems it advisable, within two years of the date of entry of those goods.

(5) Where the tariff classification of goods has been re-determined or the value for duty of goods has been re-appraised under this section

- (a) the importer shall pay any additional duties or taxes payable with respect to the goods, or

(b) a refund shall be made of the whole or a part of any duties or taxes paid with respect to the goods, in accordance with the re-determination or re-appraisal.

(6) In this section "prescribed" means prescribed by regulations of the Governor in Council. 1955, c. 32, s. 3; 1962, c. 27, s.1.

47. (1) A person who deems himself aggrieved by a decision of the Deputy Minister

(a) as to tariff classification or value for duty,

(b) made pursuant to section 45, or

(c) as to whether any drawback of customs duties is payable or as to the rate of such drawback,

may appeal from the decision to the Tariff Board by filing a notice of appeal in writing with the secretary of the Tariff Board within sixty days from the day on which the decision was made.

(2) Notice of the hearing of an appeal under subsection (1) shall be published in the Canada Gazette at least twenty-one days prior to the day of the hearing, and any person who, on or before that day, enters an appearance with the secretary of the Tariff Board may be heard on the appeal.

(3) On any appeal under subsection (1), the Tariff Board may make such order or finding as the nature of the matter may require, and, without limiting the generality of the foregoing, may declare

(a) what rate of duty is applicable to the specific goods or the class of goods with respect to which the appeal was taken,

(b) the value for duty of the specific goods or class of goods, or

(c) that such goods are exempt from duty,

and an order, finding or declaration of the Tariff Board is final and conclusive subject to further appeal as provided in section 48. R.S., c. 58, s. 44; 1955, c. 32, s. 4.

48. (1) Any of the parties to an appeal under section 47, namely,

(a) the person who appealed,

(b) the Deputy Minister, or

(c) any person who entered an appearance in accordance with subsection 47(2), if he has a substantial interest in the appeal and has obtained leave from the Court,

may, within sixty days from the making of an order, finding or declaration under subsection 47(3), appeal therefrom to the Federal Court of Canada upon any question of law.

(2) An appeal under this section by any person shall be instituted by serving a notice of appeal in duplicate, in such form as may be determined by the rules, on the other parties to the appeal and by filing a copy thereof in the Registry of the Court.

(3) Service under subsection (2) on any party to an appeal shall be effected in the manner in which an information issued out of the Court could be served on him, or

(a) in the case of the Deputy Minister, by dispatching the notice of appeal to him by registered mail addressed to "The Deputy Minister of National Revenue for Customs and Excise, Ottawa, Ontario", or
(b) in the case of any other person, by dispatching the notice of appeal by registered mail to him addressed to the address appearing on records of the secretary of the Tariff Board, or, if the secretary of the Tariff Board cannot supply an address, by posting the notice of appeal in the office of the secretary of the Tariff Board.

(4) As soon as possible after an appeal has been instituted under this section, the appellant shall file a copy of the notice of appeal with the secretary of the Tariff Board.

(5) Any person who entered an appearance in accordance with subsection 47(2) may, if he has a substantial interest in the appeal, enter an appearance in the Court in such manner as may be determined by the rules and, if he has entered such an appearance, subsections (9), (10) and (11) apply to him as though he were a respondent, and may be heard on the appeal.

(6) Where the appeal has been instituted by a person referred to in paragraph (1)(c), either the person who appealed to the Tariff Board or the Deputy Minister may file a notice that he intends to support or oppose the appeal, and upon such notice being filed, subsections (9), (10) and (11) apply to him as though he were a respondent.

(7) An appeal by a person other than the Deputy Minister and all proceedings thereunder are, upon the expiration of thirty days from the day the appeal was instituted, void unless security for the costs of the appeal has been, within the said period, deposited in the Registry of the Court in the amount of one hundred and fifty dollars and, upon an appeal becoming void by virtue of this section, no further appeal may be instituted in respect of the same decision.

(8) The appellant shall set out in the notice of appeal a statement of the facts, the statutory provisions and the reasons that the appellant intends to submit in support of his appeal.

(9) The respondent shall, within thirty days from the day the notice of appeal is received by him, or within such further time as the Court may either before or after the expiration of that time allow, serve on the appellant and file in the Court a reply to the notice of appeal containing a statement of such further facts and of such statutory provisions and reasons as the respondent intends to rely on.

(10) If the respondent desires to appeal from the decision of the Tariff Board, he may, instead of filing a notice of appeal, give notice by his reply (notwithstanding that it is filed and served after the expiration of the time for appeal fixed by subsection (1)) by way of cross-appeal of his intention to contend that the decision of the Tariff Board should be varied setting out therein a statement of such further facts and of such statutory provisions and reasons as he intends to rely on in support of the contentions.

(11) Where a respondent has included in his reply a notice by way of cross-appeal, the appellant may file a reply to the cross-appeal and the provisions relating to a reply to the notice of appeal are applicable thereto mutatis mutandis.

(12) The Court may, in its discretion, strike out a notice of appeal or any part thereof for failure to comply with subsection (8) and may permit an amendment to be made to a notice of appeal or a new notice of appeal to be substituted for the one struck out.

(13) The Court may, in its discretion

(a) strike out any part of a reply for failure to comply with this section or permit the amendment of a reply, and

(b) strike out a reply for failure to comply with this section and order a new reply to be filed within a time to be fixed by the order.

(14) Where a notice of appeal has been struck out for failure to comply with subsection (8) and a new notice of appeal is not filed as and when permitted by the Court, the Court may in its discretion dispose of the appeal by dismissing it.

(15) When a copy of the notice of appeal is filed with the secretary of the Tariff Board, he shall transmit to the Registry of the Court the record and exhibits relating to the appeal.

(16) Upon the filing of the reply to the notice of appeal, the matter shall be deemed to be an action in the Court, and may be set down for hearing.

(17) The Court may dispose of an appeal by making such order or finding as the nature of the matter may require, and without limiting the generality of the foregoing, may

- (a) declare what rate of duty is applicable, or that no rate of duty is applicable, to the specific goods or the class of goods with respect to which the appeal to the Tariff Board was taken,
- (b) declare the value for duty of the specific goods or class of goods, or
- (c) refer the matter back to the Tariff Board for re-hearing.

(18) The Court may, in disposing of an appeal, make such order as to costs as, in its discretion, seems just in the circumstances.

(19) and (20) [Repealed, R.S., c. 10(2nd Supp.), s. 65.]

(21) In this section

"Court" means the Federal Court of Canada;

"respondent" means

- (a) the Deputy Minister, if the appeal is by the person who appealed to the Tariff Board,
- (b) the person who appealed to the Tariff Board, if the appeal is by the Deputy Minister, or
- (c) in any other case, a person who opposes the appeal;

"rules" means rules made under the Federal Court Act. R.S., c. C-40, s. 48; R.S., c. 10(2nd Supp.), s. 65.

49. (1) The Deputy Minister may refer to the Tariff Board for its opinion any question relating to the valuation or tariff classification of any goods or class of goods.

(2) For the purposes of sections 47 and 48, a reference pursuant to this section shall be deemed to be an appeal to the Tariff Board. 1958, c. 26, s. 3.

50. (1) Where the importation of goods has been refused at a port of entry on the ground that the goods have been determined to be prohibited goods as described in Item 99201-1 of the Customs Tariff, appeals in respect of the determination may be taken as provided in sections 46, 47 and 48, but subject to the following modifications:

- (a) paragraph 46(4)(c) shall be deemed to include a reference to a judge; and
- (b) in sections 47 and 48 the expression "judge" shall be deemed to be substituted for the expression "Tariff Board" and the expression "clerk of the court" shall be deemed to be substituted for the expression "secretary of the Tariff Board".

(2) In this section,

"judge" means

- (a) in the Province of Prince Edward Island, a judge of the Supreme Court;
- (a.1) in the Provinces of New Brunswick, Alberta and Saskatchewan, a judge of the Court of Queen's Bench;
- (b) in the Province of Quebec, a judge of the Superior Court for the district in which the port of entry is situated or in which the importer resides or carries on business; or
- (c) in any other province, a judge of the county or district court for the county or district in which the port of entry is situated or in which the importer resides or carries on business; and

"clerk of the court" means the clerk of the Supreme Court, Superior Court, Court of Queen's Bench or county or district court, as the case may be. R.S., c. C-40, s. 50; 1974-75-76, c. 48, s. 25; 1978-79, c. 11, s. 10.

APPENDIX V

ATTENDANCE AT PUBLIC HEARINGS

<u>Organization</u>	<u>Representative(s)</u>
1. Acheson, J.S., Associates	J.S. Acheson
2. Agriculture, Department of, Canada	Patrick Lenouvel
3. Anti-Dumping Tribunal, Canada	A.B. Trudeau
4. Ball and Roller Bearing Manufacturers' Association of Canada, The ⁽¹⁾	Don S. Wood
5. Border Brokers Limited	Charles T. Connors D.A. Cooper
6. Brown Boveri Canada Ltée	Hans Omann
7. Canadian Apparel Manufacturers Institute ⁽¹⁾ Alberta Apparel Manufacturers Institute Apparel Manufacturers Association of Ontario Apparel Manufacturers Institute of Quebec B.C. Fashion and Needle Trade Association Manitoba Fashion Institute Childrens Apparel Manufacturers Association Canadian Shirt Manufacturers Association Mens Clothing Manufacturers Association of Quebec Quebec Outerwear Knitters Association Society of the Button Industry	Peter Clark Fred Bryan
8. Canadian Association of Equipment Distributors	J.W. Hopper J.S. Thorp
9. Canadian Association of International Textile Traders and The Textile Trade Association ⁽¹⁾	Peter Clark
10. Canadian Chemical Producers' Association, The ⁽¹⁾⁽²⁾⁽³⁾	Jean M. Bélanger Wilbert L. Canniff J. Weldon Carlyle E.H. Toombs
11. Canadian Federation of Independent Business ⁽¹⁾	James Bennett Peter Clark

<u>Organization</u>	<u>Representative(s)</u>
12. Canadian Food Processors Association ⁽¹⁾	O. Schultz W. Peter Scholze B. Snyder Michael G. Teeter
13. Canadian Horticultural Council ⁽¹⁾	Wm. Daman Danny Dempster
14. Canadian Hospital Association	Paul Brown
15. Canadian Importers Association Inc. ⁽¹⁾	Keith G. Dixon Stuart Culbertson
16. Canadian Institute of Chartered Accountants ⁽³⁾	P.H. Wood Irene David M.G. Mallin P.D. Young
17. Canadian Manufacturers' Association, The ⁽¹⁾⁽³⁾	K. Whittall C.L. Hagerman Terry McBride
18. Canadian Pulp & Paper Association	A. Lacroix
19. Canadian Textiles Institute ⁽¹⁾⁽²⁾⁽³⁾	Eric Barry William J. Berry P.R. Duffield Harold M. Erlendson T. Roy Hastings Eric Hehner G.P. MacPherson
20. Canadian Timken Limited	M.M. Haycock
21. Celanese Canada Inc.	R.G. Hest M.G. Lamere
22. C-I-L Inc.	D.L. McIntyre A.W. Phillipowsky
23. Cogit International Corporation	Lucie A. Cartau John Clark Linda Mullen
24. Consoltex Canada Inc.	A. Vesnaven

<u>Organization</u>	<u>Representative(s)</u>
25. Consumer and Corporate Affairs, Department of, Canada ⁽¹⁾⁽²⁾⁽³⁾	Craig Campbell Wm. J. Carroll
26. Costpro	Jean B. Massicotte
27. Creightons Limited	C.J. Creighton
28. Dalhousie University	A.J. Kububa
29. Deloitte, Haskins & Sells Limited	A. Zegarchuk
30. Digital Equipment of Canada Limited	Robert Meilleur
31. Distribution Consultants Canada Ltd.	M.J. Mason
32. Dominion Foundries and Steel, Limited	J.A. Armstrong
33. Dominion Textile Inc.	E. Kutasi
34. DuPont Canada Inc.	Harold M. Erlendson C.L. Hagerman
35. Emery Industries Limited	D.E. Wylds
36. Far East Trade Service Inc. ⁽¹⁾⁽³⁾	J.D. Timothy Pinos Patrick Orr
37. Finance, Department of, Canada	F. Robitaille
38. Ford Motor Company of Canada, Limited	G.W. Childerhose
39. Foster Tax & Tariff	Keith V. Sandford
40. General Motors of Canada Limited, Diesel Division	Terry McBride
41. Gottlieb, Kaylor, Swift & Stocks	Armand Elbaz
42. Gowling & Henderson	S. Clark
43. Hoffmann-LaRoche Limited/Limitée	E. Black
44. Home Furnishing Industries Association ⁽¹⁾	-
45. IBM Canada Ltd.	J. Bennett Robert Paule

<u>Organization</u>	<u>Representative(s)</u>
46. Imperial Oil Limited	J. Weldon Carlyle
47. Industry and Tourism, Ministry of, Ontario	Stephen C. Lau
48. Industry, Trade and Commerce, Department of, Canada	D.F. Podruzny R. Rush Daniel J. White
49. Japan Silk and Synthetic Textile Exporters' Association and Japan Chemical Fibres Association ⁽¹⁾	Peter Clark
50. J.W. Latimer	J.W. Latimer
51. Libby McNeill & Libby of Canada, Limited	W. Peter Scholze
52. Lubertex Inc.	Robert Rothlander
53. Mendelssohn Commercial Limited	J. Lenet Marcel Lepine
54. Mitel Corporation	T. Kent Ellton
55. Monsanto Canada Limited	E.H. Toombs
56. Motor Vehicle Manufacturers' Association	Norman A. Clark
57. Nova Scotia Power Corporation	G.F. Hessian H.C. Wheatley
58. Petrosar Limited	M.O. Brousseau E.R. Clarke
59. Polaroid Corporation of Canada Ltd.	David Leighton
60. Polysar Limited	G.H. Bagley
61. Revenue Canada	Brian W.S. Brimble A. Damiani P. Lecomte P. MacAulay Stuart MacDonald R.P. McGee M. McGill Alastair Moran

<u>Organization</u>	<u>Representative(s)</u>
61. Revenue Canada (cont'd)	Dene Palmer Robert Reade M. Siegrist
62. Rockwell International of Canada Ltd.	J.M. Cumming
63. Rubber Association of Canada, The ⁽¹⁾⁽²⁾⁽³⁾	G.G. Roeder G.P. MacPherson
64. Shoe Manufacturers' Association of Canada ⁽¹⁾⁽³⁾	G.P. MacPherson
65. SKF Canada Limited	Robert N. Norris
66. Smith, Lyons, Torrance, Stevenson & Mayer ⁽³⁾	J.G. Torrance, Q.C.
67. Snyder & Sons, Ltd./Ltée	B. Snyder
68. Tracon Consultants Ltd.	M.J. Collins D.J. Goodwin
69. Turkey, Embassy of	Kani Gungor
70. United Customs Brokers Ltd.	Ed Rowett
71. United States of America, Consulate General of, Halifax, N.S.	W.J. Haugh
72. United States of America, Embassy of	Leroy Nesbit
73. York Farms, Division of Canada Packers Limited	O. Schultz

(1) Brief received by the Board.

(2) Supplementary written statement.

(3) Supplementary submission received in response to analysis of major issues by Tariff Board staff.

APPENDIX VI

ARTICLE VII OF THE GENERAL AGREEMENT ON TARIFFS AND TRADE

Valuation for Customs Purposes

1. The contracting parties recognize the validity of the general principles of valuation set forth in the following paragraphs of this Article, and they undertake to give effect to such principles, in respect of all products subject to duties or other charges or restrictions on importation and exportation based upon or regulated in any manner by value. Moreover, they shall, upon a request by another contracting party review the operation of any of their laws or regulations relating to value for customs purposes in the light of these principles. The CONTRACTING PARTIES may request from contracting parties reports on steps taken by them in pursuance of the provisions of this Article.

2. (a) The value for customs purposes of imported merchandise should be based on the actual value of the imported merchandise on which duty is assessed, or of like merchandise, and should not be based on the value of merchandise of national origin or on arbitrary or fictitious values.

(b) "Actual value" should be the price at which, at a time and place determined by the legislation of the country of importation, such or like merchandise is sold or offered for sale in the ordinary course of trade under fully competitive conditions. To the extent to which the price of such or like merchandise is governed by the quantity in a particular transaction, the price to be considered should uniformly be related to either (i) comparable quantities, or (ii) quantities not less favourable to importers than those in which the greater volume of the merchandise is sold in the trade between the countries of exportation and importation.

(c) When the actual value is not ascertainable in accordance with sub-paragraph (b) of this paragraph, the value for customs purposes should be based on the nearest ascertainable equivalent of such value.

3. The value for customs purposes of any imported product should not include the amount of any internal tax, applicable within the country of origin or export, from which the imported product has been exempted or has been or will be relieved by means of refund.

4. (a) Except as otherwise provided for in this paragraph, where it is necessary for the purposes of paragraph 2 of this Article for a contracting party to convert into its own currency a price expressed in the currency of another country, the conversion rate of exchange to be used shall be based, for each currency involved, on the par value as established pursuant to the Articles of Agreement of the International Monetary Fund or on the rate of exchange recognized by the Fund, or on the par value established in accordance with a special exchange agreement entered into pursuant to Article XV of this Agreement.

(b) Where no such established par value and no such recognized rate of exchange exist, the conversion rate shall reflect effectively the current value of such currency in commercial transactions.

(c) The CONTRACTING PARTIES, in agreement with the International Monetary Fund, shall formulate rules governing the conversion by contracting parties of any foreign currency in respect of which multiple rates of exchange are maintained consistently with the Articles of Agreement of the International Monetary Fund. Any contracting party may apply such rules in respect of such foreign currencies for the purposes of paragraph 2 of the Article as an alternative to the use of par values. Until such rules are adopted by the CONTRACTING PARTIES, any contracting party may employ, in respect of any such foreign currency, rules of conversion for the purposes of paragraph 2 of this Article which are designed to reflect effectively the value of such foreign currency in commercial transactions.

(d) Nothing in this paragraph shall be construed to require any contracting party to alter the method of converting currencies for customs purposes which is applicable in its territory on the date of this Agreement, if such alteration would have the effect of increasing generally the amounts of duty payable.

5. The bases and methods for determining the value of products subject to duties or other charges or restrictions based upon or regulated in any manner by value should be stable and should be given sufficient publicity to enable traders to estimate, with a reasonable degree of certainty, the value for customs purposes.

NOTE TO ARTICLE VII

Paragraph 1

The expression "or other charges" is not to be regarded as including internal taxes or equivalent charges imposed on or in connection with imported products.

Paragraph 2

1. It would be in conformity with Article VII to presume that "actual value" may be represented by the invoice price, plus any non-included charges for legitimate costs which are proper elements of "actual value" and plus any abnormal discount or other reduction from the ordinary competitive price.

2. It would be in conformity with Article VII, paragraph 2(b), for a contracting party to construe the phrase "in the ordinary course of trade ... under fully competitive conditions", as excluding any transaction wherein the buyer and seller are not independent of each other and price is not the sole consideration.

3. The standard of "fully competitive conditions" permits a contracting party to exclude from consideration prices involving special discounts limited to exclusive agents.

4. The wording of sub-paragraphs (a) and (b) permits a contracting party to determine the value for customs purposes uniformly either (1) on the basis of a particular exporter's prices of the imported merchandise, or (2) on the basis of the general price level of like merchandise.

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THE GATT AGREEMENT
ON CUSTOMS VALUATION
JUNE 1987
TARIFF ADJUSTMENTS



REFERENCE
158

REPORTS BY
THE TARIFF BOARD

REFERENCE No. 159

A REPORT OF AN INQUIRY

by the

TARIFF BOARD

respecting

THE GATT AGREEMENT ON CUSTOMS VALUATION

PART II

TARIFF ADJUSTMENTS

This report, made pursuant to a reference by the Minister of Finance and signed by the Board on June 8, 1983, is presented for tabling in Parliament under the provisions of section 6 of the Tariff Board Act.

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CHAPTER I

SCOPE OF THE REFERENCE AND RESEARCH METHODOLOGY

Origins of the Reference and Procedures

In April 1979 the multilateral trade negotiations (MTN) held under the auspices of the General Agreement on Tariffs and Trade (GATT) was concluded with the initialling by the major participants of a number of new tariff and trade agreements. One of the most significant developments during the MTN was the negotiation of the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade and Protocol, commonly referred to as the Customs Valuation Code. GATT Article VII states that "the value for customs purposes of imported merchandise should be based on the actual value of the imported merchandise on which duty is assessed". The term "actual value" is defined as "the price at which, at a time and place determined by the legislation of the country of importation, such or like merchandise is sold or offered for sale in the ordinary course of trade under fully competitive conditions". Under the current provisions of the Canadian Customs Act (sections 35 to 44) the value for duty of imported merchandise is based on the "fair market value" when like goods are sold by the foreign manufacturer in similar quantities and to the same trade level in the manufacturer's domestic market. The Customs Valuation Code interprets the provisions of GATT Article VII by requiring that under normal competitive conditions the value for duty of imported merchandise shall be the "transaction value". The Code defines the "transaction value" as being the selling price of the goods, in certain situations adjusted so as to reflect various costs and allowances directly related to the sale of the goods. The adjustments which may be made to the selling price are specified in the Code.

The Customs Valuation Code was implemented on July 1, 1980, by the major signatories, including the United States, the EEC and Japan. Canada signed the Code in 1979 subject to the following reservation which was accepted by all the other signatories.

Notwithstanding articles 24 and 25⁽¹⁾ of the Agreement on the Implementation of Article VII of the General Agreement on Tariffs and Trade (hereinafter referred to as the Valuation Agreement) Canada will implement the Valuation Agreement no later than January 1, 1985 provided that before that date there has been agreement under Article XXVIII of the GATT on such adjustments in Canadian tariff rates as may be needed to maintain tariff protection at the levels that would prevail were Canada not to implement the Valuation Agreement.

(1) These articles relate to implementation of the Code by signatories.

In order to assist the government in the implementation of the Customs Valuation Code, the then Minister of State (Finance), The Honourable Pierre Bussi res, sent the following letter of reference to the Chairman of the Tariff Board on August 29, 1980.

Mr. John A. MacDonald,
Chairman,
The Tariff Board,
365 Laurier Avenue West,
Ottawa, Ontario.
K1A 0G7

Dear Mr. MacDonald:

Canada agreed, in the context of the Multilateral Trade Negotiations in Geneva, to adopt the new international agreement on customs valuation, copy attached, provided certain conditions were met. A copy of the Canadian Reservation to the agreement, which was signed December 17, is also attached.

I believe it would be appropriate for the Tariff Board to review certain matters relating to implementation of the customs valuation agreement by Canada. I therefore direct the Tariff Board to make a study and report, under Section 4 of the Tariff Board Act, on:

- (1) whether the attached draft legislation would provide a suitable basis for valuing Canadian imports in accordance with the agreement;
- (2) the impact that implementation of such legislation would have on tariff protection.

I think it is important that there be public hearings on the draft legislation in advance of the Board's study and hearings on the possible impact of such a new valuation system on tariff protection. In the first part of its study the Board should examine the extent to which the draft legislation fully protects the rights, and gives effect to the obligations, that Canada would have as a signatory to the agreement. In this connection, I would ask the Board to take into account the way in which Canada's major trading partners intend to implement their rights and obligations under the agreement.

I would also like the Board's views on whether the valuation rules are set out in the draft legislation in sufficient clarity to enable importers and exporters to estimate, with reasonable accuracy, the value for duty of their goods in advance of importation, and whether the

draft legislation would provide an adequate basis for appeals to the Tariff Board in cases where there may be disputes as to the proper valuation.

The Board's report on the first part of the reference together with any recommendations for revisions to the draft legislation should be submitted to me by April 1, 1981. I would expect to be in a position to give the Board an indication as to the government's position on any changes recommended in the draft legislation within three months of their receipt.

The primary objective of the second phase of the Board's study is to provide advice on what, if any, tariff adjustments would be required to maintain the same level of tariff protection or to ensure that duties collected would not decline significantly if the new valuation system were adopted. The level of duties collected should be calculated on the basis of concessions negotiated in the Tokyo Round, or where there were no such concessions, the applied tariff rates. I would expect to receive detailed recommendations in this regard either on an item-by-item basis or whatever other basis seems appropriate. In conducting this study the Board should only examine the valuation system as it existed and was being applied at the beginning of April 1979, when Canada announced it would adopt the agreement on customs valuation if certain conditions were met. I would leave it up to the Board to decide what evidence is relevant in this regard.

In cases where the value for duty is now established by Ministerial prescription under Section 39 of the Customs Act (for example used goods, job lots, discontinued lines and other-than-prime quality goods) I would direct the Board to consider whether or not a tariff rate adjustment would be the most appropriate or feasible means of providing the protection now accorded in these cases by virtue of the Ministerial prescriptions. In this connection, I would ask the Board to consider whether some of the problems which the current valuation system seeks to address might better be dealt with under other instruments of import policy, including those discussed in the recently published discussion paper on Import Policy.

I would ask that the Board report on the second part of the reference by July 1, 1983 to allow the government time to reach decisions on these matters and discuss them with our trading partners prior to January 1, 1985.

Yours sincerely,

Pierre Bussi eres.

The reference was clearly divided into two parts. The first part was concerned with the proposed legislation to implement the Code, and the second part was to deal with possible tariff rate adjustments or whether other instruments of Canadian import policy might better compensate for any reduction in protection resulting from the loss of the fair-market-value system.

Following receipt of the Minister's letter of reference, the Board published a Notice of Public Hearing (Notice R-202) in the Canada Gazette and placed advertisements in a number of leading newspapers scheduling public hearings with respect to Part I of the inquiry to take place between December 10, 1980, and January 6, 1981, in Ottawa, Halifax and Vancouver. Subsequently, on account of the small number of anticipated participants, the hearing in Vancouver was cancelled. Approximately three hundred interested parties communicating with the Board in response to these advertisements were sent copies of background material comprising the International Agreement on Customs Valuation, the Canadian Reservation thereto, and the letter of reference from the Minister to the Chairman of the Tariff Board. Two further background papers - one comparing the provisions of the Canadian draft legislation and the articles of the Customs Valuation Code, and the other charting the various elements of cost entering into the determination of the value for duty under the alternative procedures laid down in the draft legislation - were compiled by the Board's staff as an aid to understanding and were circulated to all parties prior to the first hearing.

The public hearings in December, 1980 were attended by representatives of 73 companies, organizations and other interested parties. The Board reviewed 18 written submissions which had been submitted in advance and received further comments and views from those present. Following these public hearings a staff analysis of the major issues was prepared and mailed to all interested parties on January 19, 1981. A final public hearing for Part I of this reference was held in Ottawa on February 9, 1981, at which time a further 9 submissions were received and reviewed.

The Board's Report on Part I concerning the proposed amendments to the Customs Act was signed on March 27, 1981, and submitted to the Minister by April 1, 1981.⁽²⁾ The Minister responded to the Board's Report on Part I on December 21, 1981, at which time he also provided copies of revised draft amendments⁽³⁾ to the value for duty provisions of the Customs Act incorporating many of the Board's recommendations. Copies of the Minister's

(2) Tariff Board, Reference No. 159 - The GATT Agreement On Customs Valuation. Part I. Proposed Amendments To The Customs Act. (1981) Copies of this report may be obtained from authorized bookstore agents or by mail from Canadian Government Publishing Centre, Supply and Services Canada, Hull, Quebec, Canada, K1A 0S9, catalogue no. FT4-159E (French text, FT4-159F), price Canada \$9.00, other countries \$10.80.

(3) Department of Finance, Revised Draft Amendments to the Customs Act: Value for Duty. December, 1981.

response, the revised draft legislation and the Board's Background Paper were sent to approximately 5,200 importers and producers with a potential interest in the subject area. At the same time the Board announced that a public hearing respecting possible tariff adjustments would commence in Ottawa on Monday, June 14, 1982.

In connection with this public hearing the Board received 35 submissions, 20 from industrial associations and 15 from individual companies, concerning the loss of protection envisaged by adopting the transaction price system of valuation and the possible tariff adjustments which would compensate for this loss. Six of these were from companies concerned with the manufacture or sale of textiles and related goods, while others dealt specifically with certain chemicals, plastics and rubber products. The public hearing sat from June 14 through June 16 and was attended by as many as 62 interested parties.

Following the June hearing the Board's staff prepared a Staff Appreciation of the Evidence⁽⁴⁾ which was distributed to over 600 interested parties. A further public hearing, held on January 31, 1983, to receive observations on this appraisal, attracted 23 written submissions from associations and companies, while representatives of 32 organizations attended the proceedings.

Significance of Customs Valuation

The rates of duty in customs tariffs are expressed in terms of specific duties, ad valorem duties or some combination thereof. Where goods are free of duty, or are subject to a specific rate, i.e., a rate expressed in dollars and cents per unit of the goods imported, the value for duty and the method of establishing that value lose much of their importance. In such cases, customs values are significant only for purposes of trade statistics or when a percentage tax is subsequently levied on a value derived from the value for duty.

Where there is an ad valorem factor in the rate of duty, then the method of establishing the value for duty may be as significant for protection or customs revenues as the rate of duty itself. Any advance in value is accompanied by a commensurate increase in both duties collected and in the level of protection. Values for duty are also significant in relation to the imposition of such charges as anti-dumping duties as well as in relation to any subsequent percentage imposts (such as federal sales and excise taxes).

Customs Valuation in Canada

The general principles of customs valuation used in Canada are set forth in sections 35 to 44 of the Customs Act, which incorporate the three main bases of valuation: the fair market value of the goods at the time and

(4) This paper is reproduced as Appendix C of this Report.

place of export to Canada; authorization for the Minister to prescribe a method of valuation when the fair market value cannot be determined or where, because of the nature of the goods, it is considered inappropriate for valuation; and finally, an overriding provision that the value for duty shall not be less than the selling price to the Canadian customer exclusive of all charges incurred after goods have left the point of direct shipment. This final provision ensures that, regardless of any of the other provisions of the fair-market-value system, its application never results in a downward adjustment in the actual value for duty.

In essence, the fair market value is the price at which like goods are freely traded under comparable conditions and circumstances (level of trade, time, place, etc.) on the domestic market of the country of export. The principle of fair market value was introduced into the customs administration of the Province of Canada prior to Confederation, and was carried forward into the first Customs Act passed by the Dominion Parliament in 1867 (31 Vict.,c.6,s.31). Ministerial prescriptions under specific circumstances were first authorized in 1888 (51 Vict.,c.14,s.15). The use of the invoice value (i.e. the transaction price) as a minimum value was introduced in 1907 (6-7 Edw.VII.,c.10,s.4).

Although the valuation provisions of the Customs Act have been amended from time to time, such changes have usually been limited to detail or designed to deal with new situations. Certain provisions introduced in the inter-war period (1918-39) were found to be contrary to GATT and were removed in 1948. In some cases, changes resulted from judicial decisions contrary to departmental practices and interpretations; this was, at least partially the cause of the last major changes, in 1955 and 1958, which spelled out in considerable detail the methods of establishing fair market value after the Department of National Revenue had been overruled on certain cases involving price and freight equalization. An example of new circumstances requiring change was the appearance of state-trading nations, which led to the introduction of valuations based upon third-country comparisons, usually applied by Ministerial prescription.

An important factor affecting the value for duty is the place at which this is determined. Under the fair-market-value system, the value for duty is established at the point of direct shipment to Canada. Consequently, the value for duty is a f.o.b. value excluding subsequent freight, brokerage and insurance charges. Freight is treated in the same way in the revised draft legislation. Consequently, the loss of the fair-market-value system does not involve any tariff adjustments arising from a different treatment of freight in arriving at the value for duty under the new system.

The application of the concept of fair market value and the general approach embodied in the use of Ministerial prescriptions are contrary to the provisions of the new GATT Valuation Code.

Administration of Customs Valuation

One facet of the enforcement of Canada's present valuation system is the issuing of valuation rulings. Valuation rulings (including Ministerial prescriptions) may be of a general policy nature or they may be specific to certain named products from particular countries or firms - e.g. value for duty shall be, "cost of production advanced by 10 per cent" or "your price list xyz effective December 31, 1980". Rulings of general interest are published in memoranda available to the public, while those of narrower or individual concern are provided on a limited or confidential basis to specific exporters and are not published. Copies of rulings which do not contain commercially-sensitive data are supplied to the customs inspectors and commodity specialists at the ports of entry.

In cases of doubt or dispute, or where a change in ruling is requested, a detailed investigation may be carried out by customs officials located in, or despatched to, the country of export. In accordance with sections 36 and 37 of the Customs Act, information will be sought in regard to relevant selling prices and/or costs of production in the exporter's home market. This information will become the basis for the determination of the fair market value. In the event that such data are not available, or if the circumstances are otherwise "unusual" (e.g. in the case of discontinued lines or other low-cost imports, or where goods originate in state-controlled economies), the method of determining the value for duty will normally be prescribed by the Minister under section 39 or 40 of the Customs Act. The value for duty may thereby be substantially raised in relation to the declared selling price, and hence the protective effect of the tariff may be significantly increased. A review of the list of goods encompassed by Ministerial prescriptions suggests that some industrial sectors, particularly wearing apparel and footwear, have become heavily dependent upon the use of this device to limit the adverse impact of foreign competition from low-cost suppliers.

Parameters of the Reference

A number of the submissions presented to the Board during the first phase of the reference addressed matters on which the Minister had not sought an opinion. Several parties argued in favour of the retention of Canada's current system of customs valuation or urged the Board to recommend against the rapid or unqualified adoption of a system based on the transaction value. In its report on Phase I of the inquiry, the Board set down its perception of these considerations as being outside the terms of reference supplied by the Minister.⁽⁵⁾ However, this opinion notwithstanding, the same positions were reformulated following publication of the Background Paper containing the results of the Board's research into the likely effects of the proposed change in the basis of valuation on tariff protection and customs revenue. A number of interested parties expressed surprise that the perceived upward tariff

(5) Reference No. 159. Part I, p. 4.

adjustments were, in the majority of cases, so negligible. The initial reaction of some parties was to question either the research approach or the validity of the calculations.

In commenting on this approach several participants argued that the additional revenue produced by a valuation action is only a complete measure of the additional tariff protection in the case where all goods imported under a particular tariff item were subject to the valuation action. The Board recognizes that this is true. The fact remains, however, that the revenue effect of the fair-market-value system is the only objective and quantifiable measure of the impact of the system. In addition, the revenue impact is the measure used in the negotiation of GATT MFN tariff concessions. In many cases, tariff adjustments alone can provide only a partial solution under an MFN tariff for the loss of fair-market valuation actions.

This problem was addressed in a letter from the Canadian Manufacturers' Association (CMA) to the Minister of State (Finance) dated in April, 1982. The President of CMA noted that "the basic inference to be drawn from the Background Paper is that, with a limited number of exceptions, the basic GATT rule, prohibiting discriminatory treatment between imports of the same product from different sources means that Canadian tariff rates cannot be adjusted in such a way as to maintain Canadian levels of tariff protection".⁽⁶⁾ The CMA concluded "that Canada's conditional commitment is invalidated and that consideration can therefore be given to alternative methods of achieving the aim expressed in the Canadian Reservation".⁽⁷⁾ Accordingly, the Minister was requested to expand the Board's terms of reference to encompass a review of "other alternative courses of action besides possible adjustments in rates of duty". In like vein, on May 28, 1982, the President of the Canadian Textiles Institute (CTI) wrote to the Minister reminding him of the conditional nature of the Canadian Reservation, and suggesting that "the only effective way of dealing with this problem [i.e. of implementing fully compensatory tariff adjustments "in the face of opposition from our trading partners"] is to negotiate within a broader context, namely, the next round of Multilateral Trade Negotiations". In his response to these representations, the Minister reaffirmed the government's intention to implement the Customs Valuation Code by January 1, 1985, stating that, in his view, there were no grounds for reconsidering this commitment, "in whole or in part".

Another question regarding the terms of reference concerns the Board's determination of the base period data which can be taken into account. In keeping with Canada's commitments under GATT, the Minister's letter of reference instructed the Board to consider only possible tariff adjustments based upon an examination of the fair-market-value system of customs valuation "as it existed, and was being applied, at the beginning of April 1979", when Canada announced that it would adopt the Code if certain

(6) For the full text of this correspondence, see Appendix C, infra, pp. 57-68.

(7) Letter dated October 27, 1982.

conditions were met. Based on its interpretation of the Minister's instruction, the Board proceeded on the assumption that the reference period for the inquiry could not extend beyond the aforementioned date and, accordingly, the main emphasis of its pre-hearing research activity was concentrated upon a review of customs valuation as it pertained to importations into Canada during the 15-month period ending March 31, 1979.

However, at the hearing stage various parties also put forward the view that valuation actions - in the form of new or modified rulings or ministerial prescriptions - taken or instituted subsequent to the beginning of April, 1979, should also be taken into account. In practice, such actions could have either raised or lowered the level of tariff protection. However, evidence presented by interested parties suggested an interest only in those cases where the impact of a valuation action had been to increase the protection afforded to domestic industry since 1979. In the Board's opinion, such selective upward adjustments would clearly be discriminatory.

Reasons of equity apart, however, none of the evidence placed before the Board has served to weaken its initial appreciation of Canada's obligations under GATT as requiring that only those goods subject to valuation actions in existence, and being applied, prior to the beginning of April, 1979, should be considered as candidates for tariff adjustments. It should be noted that, suggestions to the contrary notwithstanding, this viewpoint has also precluded the Board from making judgments regarding potential, as opposed to actual, increases in value for duty. In his response to the CMA, the Minister noted that "the wording of the terms of reference on this point was very carefully chosen", with the object of allaying any concerns on the part of other GATT signatories that "in the absence of a 'base date' for our rate adjustment exercise, Canadian manufacturers might, in anticipation of rate adjustments, seek numerous valuation reviews that would not otherwise have been initiated".

A slightly different question regarding the base period was raised by some parties who suggested that, for a number of reasons, including the declining value of the Canadian dollar, 1978 was a particularly good year for their industry. They suggested that if the base period had covered two or three years prior to 1979 then a greater value-for-duty impact for their products would have emerged. The Board is both unwilling and unable to accept this argument. The Board is unwilling to consider, at least in respect of this reference, the establishment of tariff items and related rates of duty based on a consideration of currency fluctuations during a period of floating or managed exchange rates. The Board considers that fluctuating rates of exchange are a fact of business life unrelated to the statutory rates of duty. The Board has no problem in principle with the suggestion that a base period prior to 1979 might cover more than one year. However, at the time of the Minister's reference to the Board, the Customs documents for the periods prior to January 1978 had been destroyed. While a study of more Customs entries may have had a marginal effect on some of the results, the Board is of the opinion that data pertaining to 1978 and the first quarter of 1979

adequately illustrate the impact of the fair-market-value system at the beginning of April 1979 and the loss of value for duty that would result from abandoning that system and adopting the transaction price system of customs valuation.

The Board does accept, however, that many of the non-valuation issues raised by parties during the course of this reference are valid concerns. The Board realizes that some of these problems, which in the past have been in part dealt with under provisions of the existing fair-market-value legislation and its administration, cannot be accommodated under the transaction value system and will need to be resolved in future under other legislation and by new administrative procedures. Indeed, many of the concerns expressed throughout this reference appear to stem from the public's apprehension regarding the future policy and administrative framework governing the importation of goods. The letter of reference asks the Board "to consider whether some of the problems which the current valuation system seeks to address might better be dealt with under other instruments of import policy". Thus, where such problems or issues arise, the Board clearly has a mandate to bring them to the attention of the Minister, together with broad recommendations regarding legislative or administrative solutions.

The Research Methodology

The fair-market-value system provides that the primary method of valuation is to be based on information provided by the exporter respecting sales of like goods in the country of export. The transaction value system provides that the primary method of valuation is to be based on information provided by the importer respecting the purchase of the goods actually being appraised. Implementation of the transaction value system means, therefore, that Canada will lose, once and forever, the right to value imports by means of a comparison with the selling price of like goods in the exporter's domestic market. The GATT reservation restricts tariff adjustments to those reductions in value for duty emanating from the fair-market-value system as it was administered at the beginning of April 1979.

Implementation of the transaction value system will, of course, not result in any change in the level of protection or in the amount of customs duties collected for goods classified to tariff items with MFN rates of Free or with specific rates of duty. As of January 1, 1983, out of a total of 3,374 tariff items, 211 carried specific rates of duty and 1,626 provided free entry under the MFN Tariff. Canada's Tokyo Round GATT tariff concessions will increase by 437 the number of MFN tariff items subject to a rate of Free by January 1, 1987. Furthermore, for those goods and tariff items with ad valorem rates of duty, there will not be a reduction in value for duty, and consequently no reduction in the level of protection, if the fair market value system, as it was applied in early 1979, did not result in a value for duty greater than the selling price. According to senior officials in National Revenue, Customs and Excise, over 90 percent of all importations are valued on the basis that the selling price is equal to the declared fair market value and that this is accepted as the value for duty. Consequently, the research

has concentrated on those importations where the fair market value, accepted as value for duty, exceeded the selling price, and where the loss of the fair market system will result in a lower value for duty.

This situation is most likely to prevail for importations of goods subject to value-for-duty investigations. Therefore, the first task was to identify those goods whose value for duty had been increased prior to the beginning of April 1979 by valuation actions which will no longer be possible when the transaction system of customs valuation is implemented. Once these goods are identified the question is whether or not the loss of the fair market valuation action can be compensated for by means of a tariff adjustment.

When Canada signed the Customs Valuation Code in April, 1979, it was recognized that a data base would be needed for the calculation of possible adjustments. To fulfill this need the Department of Finance, on behalf of the Tariff Board, requested Statistics Canada to retain the 1978 customs entry documents beyond the normal retention period. This request was made because the 1978 entries comprised the only information base available for the period prior to 1979.

The Board also acquired from National Revenue, Customs and Excise, copies of their case cards relating to value for duty investigations under the Customs Act. There were approximately 10,950 case cards for the period from 1971 to 1980. The information on these cards enabled the Board to identify the specific goods affected by valuation actions by their tariff item and CITC numbers and country of export.

In order to further concentrate the Board's research effort three additional steps were taken. First, it was decided to ignore all goods subject to a ruling issued prior to January 1, 1976. This decision was based on the fact that most of the rulings issued prior to early 1976 had stated fair market values in actual currency terms. Price changes, inflation and currency fluctuations had rendered these rulings largely inoperative by 1978. Second, it was decided not to include in the investigation any goods with an MFN rate of duty on January 1, 1979, of 5 p.c. or less. Since possible tariff adjustments depend on both the increase in the value for duty and the rate of duty it was decided to direct the Board's research resources at those tariff items which were most likely to demonstrate significant adjustments, i.e., those with a 1979 MFN rate of duty of more than 5 p.c. Finally, it was decided to eliminate products where the imports affected by the ruling accounted for less than 40 per cent of the total 1978 imports of that commodity class. This decision was based on the view that, where the possibly affected imports accounted for a small percentage of total imports, adjustments which might be indicated would probably be diluted to an insignificant level when weighted against the total imports of that commodity class from all countries.

It was recognized that as a result of these steps some products of particular concern to certain Canadian producers, in respect of which legitimate claims for adjustment could have been made, might have been

eliminated. This situation was clearly acknowledged in the Background Paper, and interested parties were invited to bring such products to the Board's attention for further study. Such additional goods were identified by participants, but subsequent research failed to produce any significant additional rate adjustments.

Finally, 599 categories of goods, defined at the 7-digit CITC level, entering under 165 different tariff items, and subject to value-for-duty investigations, were identified. Statistics Canada then generated a random sample of 60,000 entry lines⁽⁸⁾ of the 599 7-digit CITC goods so that the actual entry documents could be retrieved and examined. The 60,000 individual entry lines were found on 38,527 separate customs documents, indicating that in many instances several products sold by individual foreign exporters were affected by value-for-duty rulings. Every entry line on these customs documents was checked against the master list of the 599 commodities which had been selected for study with the result that a total of 113,245 individual entry lines were actually identified and summarized. These 113,245 entry lines represented 32 per cent of the total entry lines for the 599 commodities. Since the entry documents had been randomly selected by the computer, it is assumed that these entries also represented approximately 30 per cent of the total imports of these goods in terms of both their value and quantity.

The relevant information on each entry line which may have been affected by a value-for-duty ruling was summarized; 7-digit CITC number, description of the goods, tariff item, rate of duty, country of export, name of importer, selling price, declared fair market value, value for duty, and any other relevant information such as discounts. When this information had been summarized and filed by 7-digit CITC code, it was possible to obtain the total value for duty and the total selling price of all the entries studied for each product category. The difference between these two totals shows the amount by which valuation actions increased the actual dollar value for duty. This dollar increase in the value for duty, when expressed as a percentage of the total selling price, provides a measure of the impact of the valuation action and of the relative loss in value for duty in the absence of the fair-market-value system of customs valuation. This impact measured against the 1979 MFN rate of duty indicates the percentage points of additional duty, or the rate-of-duty adjustment, required to maintain the same level of protection or amount of customs revenue received or collected under the present system.

(8) A complete customs document contains two parts. One is a customs invoice (completed by the exporter) listing all goods in a shipment, together with the number of units, the price per unit, the total selling price and the declared fair market value. The second part is a Customs and Excise form B-3 (completed by the importer). An entry line on the B-3 is completed for each separate product listed on the customs invoice, and shows the tariff item, the CITC number, the rate of duty, the value for duty, the duty payable, the Federal sales tax, any Excise duty, and any special duty.

It should be noted that only infrequently will an adjustment in the rate of duty result simultaneously in a maintenance of the level of protection and of the amount of customs revenue. Such a coincidence will occur only where all of the goods imported under a 7-digit CITC number are subject to a valuation action and where only these goods enter under a particular tariff item. Of course, where only a portion of the goods entering under a tariff item are subject to a valuation action, retention of the protective effect provided by the action for the affected goods would result in an increase in the level of protection for the goods entering under the item not subject to the ruling and would raise revenues collected. Maintenance of the additional revenue resulting from the valuation action would reduce or dilute the protection of the ruling, because the same amount of revenues would be levied from all imports under the tariff item, imports both covered and not covered by the valuation action. In those instances where many different CITC classes of goods not subject to a valuation action enter under a tariff item, together with one which is subject to a ruling this dilution may be so great that the resulting compensatory rate adjustment for the tariff item as a whole can almost disappear.

It is clear that if one wants to retain the additional protection where an item covers both affected and non-affected goods that the rates of duty would increase for goods, from countries and exporters who were not subject to valuation. This would be inequitable, would require compensation, and would run counter to the Minister's guidelines. The avoidance of this dilution by the creation of new tariff items for specific companies or countries named in a ruling is unacceptable because this would be in contravention of the GATT most-favoured-nation principle. In order to retain as much of the protective effect of the valuation action as possible, while maintaining the additional revenues, the rate adjustment should be designed to apply whatever possible to the specific goods affected by the action.

Once the loss in value for duty is known it is then possible to calculate the consequent loss of protection and also its effect on government revenues. This can best be illustrated by an hypothetical example. Assume that the selling price of a product was \$900.00 and that a valuation ruling increased the value for duty to \$1,000.00. Assume also that the rate of duty for this product is 10 p.c. Thus, in the absence of the valuation ruling the ad valorem protection was 10 percent and the Customs duty was \$90.00. However, the valuation ruling increased the Customs duty by \$10.00 to \$100.00 and this in turn raised the ad valorem level of protection to 11.1 percent, an increase of 1.1 percentage points compared to the original situation.

It should be further noted that there are two possible situations under which the fair-market-value system resulted in an increase in the level of protection and a possible loss in value for duty under the Customs Valuation Code which was not revealed by the customs documents. The first possibility could arise where, as the result of a valuation action, the exporter increases both the selling price and the declared fair market value. If this occurs, the study would not reveal any difference between the selling price and the value for duty. The second situation could occur where the exporter is fully aware of the provisions of the Canadian fair-market-value

system and voluntarily increases the declared fair market value on the customs invoice. In the absence of a valuation ruling by Customs and Excise such importations could not be identified. On the assumption that the foreign exporters most likely to be knowledgeable about the system would be those who had already been the subject of a fair-market-value investigation, it was decided to review every entry line on all the Customs documents studied in order to identify such voluntary compliance. This review of over 32,000 customs documents did not reveal any instances where exporters gave a declared fair market value higher than the selling price for goods which were not the subject of a valuation action.

The Board accepts that the data available on the Customs invoices cannot reveal the total impact of the fair-market-value system on export prices to Canada or on the calculation of values for duty in Canada. The weight of evidence on the public record argues that the methodology adopted by the Board has underestimated the total protective effect of the fair-market-value system but no superior alternative methodology has been suggested. The Minister requested that "the Board should only examine the valuation system as it existed and was being applied at the beginning of April 1979". The additional concerns respecting both the present and the proposed valuation systems expressed on the public record are not without foundation but it has not been possible for either the parties expressing them or the Board to substantiate them by quantitative methods. The Board has concluded that Canada's international obligations can best be met if all of its recommended tariff adjustments are based on actual customs documentation.

CHAPTER II

SUMMARY OF WRITTEN SUBMISSIONS AND ORAL EVIDENCE

The following summaries of the written submissions and of the oral evidence presented during the course of the public hearings have been prepared in order to present as complete a picture as possible of the issues and concerns raised by the public during the course of the reference.⁽¹⁾ In preparing these summaries no attempt has been made to interpret or explain the evidence presented. It will be appreciated that, by its nature, a summary cannot reproduce every point raised by a formal submission or presented at a public hearing. In addition, the summaries do not present commercial information which was submitted on a confidential basis by some of the participants. The Board's recommendations are based on a consideration of all the evidence and the summaries are presented here to acknowledge the contribution of those associations, companies and persons who have provided the Board with the benefit of their experience and knowledge throughout the course of this reference.

AMERICAN STANDARD

American Standard, a Division of Wabco-Standard Inc., made a written submission for the June hearing concerning plumbing fixtures entering under tariff item 28900-1. The company was particularly concerned about future imports under this tariff item from the United States and Mexico and noted that in the background paper only toilet bowls were mentioned, that there was nothing about other related bathroom fixtures.

American Standard expressed the opinion that the introduction of the transaction value system would be a signal to foreign producers that dumping goods onto the Canadian market would be much easier in future. The company had doubts about the effectiveness of the present anti-dumping legislation to handle the problem.

AUTOMOBILE IMPORTERS OF CANADA

The Automobile Importers of Canada (AIC) is a group within the Canadian Importers Association Inc. representing 14 foreign car manufacturers. At the June hearing the AIC was opposed to any upward adjustments in the tariff rates covering imported automobiles. The AIC argued that some imported cars are purchased because of a special appeal, particularly luxury or sports cars, and thus are not directly competitive with Canadian production. Also, the importation of such automobiles will be by related parties. As a result, transaction values may be questioned and values for duty may be adjusted where appropriate. The AIC maintained that an additional tariff rate increase would not be warranted in such circumstances. This position was restated at the January hearing.

(1) Copies of all submissions and the transcripts of the public hearings may be seen on request at the Board's offices.

As the difference between the fair market value and the selling price has been diminishing since 1979, the AIC concluded that the Board should not rely on data as it existed in 1979 in order to determine what adjustments should be made in 1985.

At the January hearing the AIC focused on two points. Namely, an upward adjustment of the rates of customs duty applicable to imported automobiles in an amount of 0.2% will not provide any protection and will be of absolutely no assistance to a troubled domestic industry whose problems cannot be resolved by any acceptable tariff rate increase. Secondly, the proposed increase of 0.2% is quite possibly the highest upward adjustment figure practicable. In any event, the precise amount of adjustment which might be warranted is virtually impossible to calculate at this time.

The AIC expressed concern that all parties know the distinction between adjustments in tariff rates as compensation for the loss of real tariff protection to a domestic industry as opposed to compensation for the loss of revenue.

As a method of resolving the tariff rate issue the AIC felt that the deductive method of valuation was the only provision of the proposed new law which seems appropriate for application to imported automobiles.

BATESVILLE CASKET COMPANY

Batesville Casket Company is a US manufacturer of coffins and caskets exporting to Canada goods classified under tariff item 51400-1. In a letter to the Board, Batesville contended that no increase is warranted in the present rate of duty for coffins and caskets imported into Canada. Batesville questioned the calculations in arriving at a ruling impact of 29.74 p.c. for tariff item 51400-1; it claimed that in most cases its own calculations showed a negligible ruling impact. The company stated that it was at a loss to understand how the Board's staff had determined that a higher rate of duty of 4.5 p.c. was justified as indicated on page 39 of the Staff Appreciation of the Evidence.

Batesville questioned whether, in the case of related party transactions, the transaction value of goods reflected accurately the value for duty under the proposed transaction value system. The company argued that the Board must take into account the adjustments provided for in section 37(5) of the Revised Draft Amendments to the Customs Act: Value for Duty to derive an accurate transaction value.

Batesville cited the lack of submissions to the Board from Canadian producers as evidence that the Canadian coffin and casket industry is not suffering from excessive foreign competition. Batesville maintained that an increase in duty rates would have the effect of perpetuating inequities in the existing valuation provisions affecting related parties.

CANADA STARCH COMPANY INC.

Canada Starch Company Inc. registered its concern prior to the first public hearing about tariff item 5500-1 covering grain corn and queried what effect a move to a transaction value system might have on this commodity. The company noted that the rate of duty will be reduced annually to 5¢/bushel by

1987 and not remain at 8¢/bushel as indicated in the background paper. Canada Starch stated that the present specific rate of duty was easier to apply than would be the case with an ad valorem rate.

CANADIAN APPAREL MANUFACTURERS INSTITUTE

The general position taken by the Canadian Apparel Manufacturers Institute at the June hearing was that it did not seek any tariff rate increases to compensate for the loss of either value-for-duty rulings or ministerial prescriptions when the new valuation system is introduced. Although the Institute was still concerned about the problems raised by it in respect of Part I of this reference (acceptance of transaction values for sales below cost, valuation of merchandise imported from state-controlled economies, and valuation of other-than-prime-quality or distress merchandise), its members thought that losses due to the termination of value-for-duty rulings and ministerial prescriptions may be offset to some extent through lower cost and/or greater availability of raw materials. The apparel industry imports about 50 per cent of its fabric needs, not necessarily because of price, but also because of quality, design, construction, and uniqueness. The Institute considered that it would be inconsistent and irresponsible to look for increased tariffs on imported apparel while opposing similar increases on imported fabrics.

The Institute noted that the effect of most of the ministerial prescriptions of interest to it had been diluted and while it would prefer to keep them in place, it could not devise a method of doing this that is not prohibited by the GATT Valuation Code.

The apparel industry regarded the imposition of quotas and the provisions of the Multifibre Agreement as far more important to it than trying to reinforce each and every other method of insulating itself from the very intense, predatory competition common to its markets.

Prior to the January hearing, the Institute informed the Board of its support for the Staff Appreciation of the Evidence. The Institute agreed with the general thrust of possible solutions in Chapter III and noted its appreciation of the staff efforts to find imaginative ways to offset the loss of protection afforded by ministerial prescriptions. The Institute stressed its continued opposition to proposals for tariff rate increases from the Canadian Textiles Institute and similarly would oppose any such proposals from the Canadian tanning industry.

CANADIAN ASSOCIATION OF MANUFACTURERS OF MEDICAL DEVICES

The Canadian Association of Manufacturers of Medical Devices (CAMMD), in a written submission at the June public hearing, declared itself to be generally in favour of the proposed change to the transaction system of valuation. However, it considered the Board's sample period of one year for measuring the impact of the change to be too short and recommended that at least two years of imports be studied. The Association expressed concern that under the new system there is great potential for delays and extra work due to lengthy investigations into imports between related firms. It also asked the Board to clarify what steps might be taken to monitor whether related-party

importers were gaining an unfair competitive advantage over importers operating at arm's length where unreasonably low transaction values might be used. Finally, the Association strongly recommended that transportation charges not be included in determining the value for duty. Since these charges can be highly variable, the Association argued that transportation cost information may cause confusion.

CANADIAN BUSINESS EQUIPMENT MANUFACTURERS ASSOCIATION

The Canadian Business Equipment Manufacturers Association (CBEMA) represents 80 manufacturers of a wide variety of business equipment including data processors and peripherals, typewriters, copiers, calculators and other office machines. The Association strongly endorsed a rapid adoption of the proposed valuation system. In its presentation for the June hearing CBEMA emphasized that the Tariff Board's analysis and recommendations in 1977 on Reference 150, Computers and Related Telecommunications Equipment, were still valid and working well. The Board's recommendation that a single tariff item be created for data processing equipment and parts had been implemented in 1980 with a low rate of duty. CBEMA's major concern with the proposed valuation system was that the calculations presented in the background paper for the loss of revenue and tariff protection were based on 1979 tariff classifications. The Association argued that any tariff rate adjustments should be based on the 1980 tariff classification.

CBEMA questioned the validity of using invoice prices to determine value for duty as was done in the background paper, since most of the industry's imports were from related companies. It acknowledged, however, that any problems with pricing or valuation could be adequately dealt with under the related party provisions of the proposed legislation.

The Association recommended that the classification system currently in effect for data processing equipment be retained under the new valuation system. Furthermore, there should be no increase in the rate as even a slight increase might result in requests for compensation.

In its submission to the January hearing the CBEMA informed the Board that the Staff Appreciation of the Evidence presented a fair and concise summary of its position.

CANADIAN CARPET INSTITUTE

The Canadian Carpet Institute supported the Canadian Textiles Institute's submission for the June hearing and urged that Canadian carpet imports continue to be valued under the existing fair-market-value system until the next round of multilateral trade negotiations. The Institute was of the opinion that without ministerial prescriptions Canadian carpet producers will be far more vulnerable in future to imports particularly from the United States. In the past when the economic cycle has been low and when the value of the Canadian dollar has been relatively high the carpet industry's problems have been more acute. In addition, by 1987 the carpet tariff will be reduced and the 5¢/square foot specific duty will have been eliminated.

The Institute attributed the fact that the Board's background study did not find any American carpeting goods subject to valuation rulings to the present valuation system having acted as a deterrent to undervaluation by foreign suppliers. The Institute estimated that approximately 20-30 per cent by volume of carpet imports are transactions between related parties.

THE CANADIAN CHEMICAL PRODUCERS' ASSOCIATION

In its presentation to the Board for the June public hearing the Canadian Chemical Producers' Association (CCPA) supported the position of the Canadian Manufacturers' Association. The CCPA also concluded that with the introduction of the transaction value system the level of tariff protection gained by Canada in multilateral negotiations on its products will not be retained, but will be unilaterally reduced without compensation. The CCPA was of the opinion that a tariff rate adjustment could not compensate for the loss of protection resulting from the loss of valuation rulings and ministerial prescriptions. The Association urged the Board to confirm these facts in its report to the Minister.

The CCPA argued that a Canadian valuation system which was not in strict conformity with the GATT Valuation Code would be more acceptable to Canada's trading partners than the tariff rate increases required to maintain the same level of protection for those goods subject to rulings and prescriptions. Such increases would inadvertently encompass many more products and would be rejected by the other GATT signatories.

The Association charged that the Board's staff equated maintenance of revenue with maintenance of the level of tariff protection. The CCPA considered this completely inappropriate and asked the Board to recommend that the government maintain a provision for rulings and prescriptions. If Canada's trading partners would not agree to this modification, the Association proposed that the government retain the present fair-market-value system.

CANADIAN COUNCIL OF FURNITURE MANUFACTURERS

The Canadian Council of Furniture Manufacturers represents three associations whose members are primarily producers of residential furniture. The Council's position at the June hearing, like the Canadian Manufacturers' Association, was that Canada's agreement to implement the GATT Customs Valuation Code is subject to the condition of being able to increase tariffs to compensate for all losses of protection. In the Council's opinion this condition cannot be met and, as a result, Canada is not committed to adopting the Code. The Council recommended implementing the transaction value system for those items where there would be no loss in protection, but postponing full implementation until the next round of GATT multilateral trade negotiations. In the interim, Canada should continue to issue valuation rulings as necessary.

The Council's major concern in June was periodic importation of low-priced merchandise from the United States at times when US demand is soft. This is a particular problem since 65 per cent of Canada's furniture imports come from the US. The Council contended that the amount of protection at risk is greater than indicated in the background paper because 1978 data

were used for the calculations. During this period the US market was relatively strong and the Canadian dollar declining. As a result, the level of protection provided by the fair-market-value system may have been understated for furniture imports. In addition, the Council argued that the formula used in the background paper to calculate tariff adjustments is more related to the replacement of lost government revenue than a measure of tariff compensation for lost protection. Finally, the lack of specific information on the valuation rulings in the background paper makes it difficult to identify the products most directly affected. In the Council's view, adoption of the new valuation system will leave the Canadian market liable to sporadic dumping, for example, of less-than-prime quality products or end-of-season clearances. The Council argued that recourse to the anti-dumping system does not provide an effective solution for these problems.

In its second submission to the Board, made prior to the January hearing, the Council supported the position taken by the Canadian Manufacturers' Association in its January brief. The Council in particular expressed its disappointment at the position of the Board's staff that tariff rate adjustments are the only recommendations the Board is authorized to make.

The Council agreed with the CMA that present levels of tariff protection should be maintained and that rate adjustments are warranted even when there have been no representations to the Board specifically requesting them.

The Council found the references in the Staff Appreciation of the Evidence to gains in levels of tariff protection resulting from implementation of the new Valuation Code to be largely speculation because the gains were not identified. The staff were also criticized for dismissing a two per cent increase in a tariff rate as little more than a nuisance to a Canadian importer. The Council expressed its hope that the Board will recommend that those departments and officials who are responsible for the development and administration of import policy be asked for positive suggestions on how to continue the current levels of tariff protection.

CANADIAN FEDERATION OF INDEPENDENT BUSINESS

The Canadian Federation of Independent Business (CFIB) represents about 55,000 members in the service, retail, and small manufacturing industries. The Federation's philosophy is one of free trade and at the June hearing it opposed any tariff rate increases designed to compensate for losses incurred by switching from the fair-market-value system to the transaction value system. The CFIB stated that the proposed new system will place significant burdens on its members. It found the proposed regulations even more complex than expected and argued that as a result of these complexities, the transaction value system itself will provide a measure of protection.

THE CANADIAN HORTICULTURAL COUNCIL

The Canadian Horticultural Council submitted both written and oral evidence at the June hearing expressing the concerns of the Canadian cut-flower industry at the prospect of losing the protection of ministerial prescription D46-10. This prescription was re-introduced in 1980 and applies

to carnations, chrysanthemums and roses imported from all countries. Although the USA and Colombia are the major suppliers of cut flowers into Canada, the Council was particularly concerned about Colombia and claimed that Canadian producers faced unfair competition from Colombian exports even with the value-for-duty provisions now in force.

The Council maintained that ministerial prescriptions are the only safeguard against third world or state-controlled economies and the elimination of these will have disastrous effects on the Canadian cut flower industry. The Council saw two problems if tariff rate adjustments were implemented to compensate for any loss in current protection. First, it would be extremely difficult to determine a fixed rate. Second, there would be very little probability that Canada's trading partners would agree to an increase. The Council noted that a rate adjustment would have to be applied uniformly to all trading countries including non-signatories of the GATT. As a result of these problems, the Council was convinced a reduction in tariff protection would be unavoidable.

The Council proposed two alternative solutions in addition to a higher tariff rate. First, a provision in Canadian legislation to permit ministerial prescriptions to be used for the valuation of goods from non-signatories of the GATT. The second alternative was to improve and streamline the current surtax provisions to meet the unique needs of the horticultural industry. According to the Council, the perishable nature of the industry's commodities, highly volatile production variations and seasonality are prime reasons that such measures as countervailing and anti-dumping legislation are of limited value to the industry.

The Council asked the Board to consider the ministerial prescription applicable to the industry although it came into effect after 1979 and to create a separate tariff item for carnations, mums and roses, removing them from tariff item 7915-1.

CANADIAN IMPORTERS ASSOCIATION INC.

The Canadian Importers Association (CIA) represented more than 800 member firms before the Board. At the June hearing the Association told the Board that its members assumed the GATT Valuation Code will be adopted by Canada precisely as conceived and negotiated. Further, they totally rejected the concept put forth by other participants that Canada can and should adopt the transaction value system only for commodities which are of little concern to Canadian producers, but retain the fair-market-value system and ministerial prescriptions for specific goods or classes of goods. The Association maintained that any valuation system should be entirely neutral and should not be used as a means of protection for domestic industries. The CIA disagreed with the suggestion favouring retention of the fair-market-value system as a first line of protection against dumping. The Association argued that anti-dumping and value for duty are two separate and distinct concepts and noted that Canada's proposed import policy contains adequate measures to take care of all of the problem imports of concern to Canadian industry.

The Association took the view that the Canadian government should be confining itself to those areas where tariff protection is at issue and suggested that the Minister's reference to loss of revenue was completely irrelevant. This point of view was reaffirmed at the January hearing.

The Association urged the Board to exercise care and fairness in its recommendations. Specifically, it recommended that no tariff rate adjustments be made on the significant portion of Canadian imports involving related party transactions, nor in those cases where rulings involve goods which are not produced in Canada. The Association also recommended that tariff rate adjustments should be considered only where value-for-duty rulings, ministerial prescriptions or similar evidence conclusively establishes the existence of actual tariff protection.

The Association maintained that its brief was not so much critical of the methods used in the background paper as it was an attempt to point out the difficulties of relying on a sampling technique, necessarily arbitrary, as a basis for proposed tariff rate adjustments. It noted that there is no way to appraise the degree of tariff protection lost until one has the facts and the 1979 data are not likely to be very meaningful in 1985 when the transaction value system is implemented. The Association asked the Board to use data after April, 1979, to make a proper determination, but only for those rulings and prescriptions already in place in April, 1979.

The Association again stated its belief at the January hearing that it is premature to make any recommendation with respect to increase in the rates of customs duty which might be required in order to protect Canadian industry.

At the June hearing the Association expressed its frustration at the number of ministerial prescriptions which have never been made public and on which the affected parties cannot make representations. It maintained that, in addition to being arbitrary, there is no recourse for appealing their use before either the courts or the Tariff Board and there is no consultation with either the exporter or importer in formulating their basis. With the introduction of the new system, these problems will disappear. The Association was satisfied that the proposed system for alternate valuations provides for on-going and complete consultation between the importer and National Revenue. However, the Association suggested very strongly that the Board should consider the legality of some of the ministerial prescriptions where third party comparisons have been applied outside the specified limits of the law.

The Association suggested that specific surcharges be applied to specified goods from named sources as a procedure to provide an equitable and non-disruptive compensatory mechanism for certain of the country-specific prescriptions. The CIA declared this procedure would be preferable to a rate adjustment for the current tariff item based on a weighted averaging of all imports of a broader class of goods.

The Association recognized that for some of the ministerial prescriptions adjustments could be made legitimately by creating a new tariff item so that there would be no impact on previously non-affected suppliers.

The Association supported Honda Canada Inc. in asking the Board to look into the question of possible tariff reductions and to make recommendations in any area where reductions might be indicated.

The Association stated in its supplementary submission in January that the amount of the adjustments proposed are so insignificant that it is highly unrealistic to assume that the Canadian industry would lose any real protection if the proposed rate increases were not implemented. The Association concluded that the proposed rate increases are unnecessary.

The Association supported the use of the additive approach in the determination of tariff rate changes. As a suggestion the Association recommended seeking compensation in an area that would do Canada more good; that is, seeking improved access to other markets by reduction in rates of import duties for Canadian exports, or an easing of some of the foreign non-tariff barriers.

The Association stated that it could accept a permanent surtax as a means of protection against less than prime quality goods.

As an alternative to quotas to control imports, an idea abhorred by the CIA, the Association suggests that maybe we can seek compensation in some other area and handle the problem through the special import policy.

CANADIAN LUMBERMEN'S ASSOCIATION

The submission for the June hearing from the Canadian Lumbermen's Association was made on behalf of a constituent group, the Canadian Hardwood Plywood Association. Concern was expressed that imports of plywood from the United States entering under tariff item 50715-1 might be priced much lower under the proposed transaction value system than under the current fair-market-value system. The Association maintained that the double impact of low pricing practices and a lower import duty would be quite damaging to Canadian producers. The only form of protection in such cases would be the Anti-dumping Act and the Association considered that producers might have difficulty obtaining the necessary evidence of dumping.

THE CANADIAN MANUFACTURERS' ASSOCIATION

The Canadian Manufacturers' Association (CMA) approved the transaction value system of customs valuation in general terms, but recommended that it be implemented only in a modified form in certain instances. At the June hearing the CMA contended that since it is not possible to adjust tariff rates to maintain the same degree of tariff protection as now prevails under the fair-market-value system, Canada is no longer bound to implement legislation in strict conformity to the International Valuation Code. The CMA recommended that Canada should adopt the transaction value system for the majority of imports which were not and would not be affected by the fair-market-value system, but reserve the right to enforce existing value-for-duty rulings or prescriptions and to make new rulings as necessary. In particular, Canada should retain the ability to issue retroactive value-for-duty rulings in cases of sporadic dumping.

The CMA maintained that under the transaction value system Canada will achieve a more efficiently administered system but, even with its suggested modification, will still lose considerable tariff protection. The Association judged the level of tariff protection at risk to be much greater than that suggested by the figures in the background paper. For example, eliminating products where affected imports accounted for less than 40 per cent of total 1978 imports ignored the fact that some of these imports may have amounted to less than 40 per cent because they were the subject of a prescription. Similarly, where no affected entries were found, the CMA argued that rather than this being a sign of negligible impact it might indicate a valuation ruling sufficiently effective to inhibit imports. The CMA regarded

the present valuation system as having a built-in deterrent effect since the fair market value can be checked. The CMA recognized that the deterrent effect cannot be accurately measured, but argued that this is no reason to ignore the reduction in the level of tariff protection which may result from implementation of the transaction value system. Further, the CMA considered that most fair market values appearing on invoices contain an element of prudence and this element will disappear under the transaction value system. The CMA estimated the drop in value for duty to be from 5-15 per cent depending on the commodity.

In the Association's view another deficiency in the background paper was that none of the examples dealt with sporadic dumping. Canada is particularly vulnerable to this problem and there will be no defense against it under the transaction value system. The CMA argued that the anti-dumping system can do nothing about sporadic dumping because the administration, particularly in respect of timing, is inadequate.

In its January submission the CMA suggested that a new tariff item could be created stating that used goods are dutiable at the normal rate applicable to the product in question plus a surcharge. Another new tariff item could state that imports which meet specified criteria identifying them as "less-than-prime quality goods", "distress merchandise" or perhaps "sales not in the ordinary course of trade" be subject to normal rates of duty for the product in question plus a surcharge ranging from 25 to 100 per cent at the discretion of the Deputy Minister. These deterrents could, presumably, be invoked retroactively.

A further point made by the Association dealt with the value on which normal duty is assessed on dumped goods. The reduction in the level of tariff protection against dumped imports is highly significant and should be compensated for, not dismissed as unimportant, in instances where the transaction is accepted as the value for duty.

The CMA was firmly opposed to across-the-board tariff increases to preserve the level of revenue collected as this would do nothing to maintain specific levels of protection but could attach more duty to goods that were not previously penalized. Creating a new tariff item was seen as a possible solution to this problem. The Association interpreted the reference in the Minister's letter to duties collected as intended to indicate only the duties collected on imports on which there were specific valuation rulings. The Association stressed that maintenance of revenues is not the same as maintenance of protection and should be of secondary importance since the purpose of a valuation action is to provide protection.

The CMA asked the Board to take into consideration revisions since 1979 to pre-1979 valuation actions and prescriptions in order to more closely reflect current commercial reality. The Association suggested that an even better policy would be to adjust for all prescriptions issued before December 31, 1984, because the Canadian reservation makes no mention of this date.

In the CMA's view, formal and complete implementation of the proposed valuation system would lead to a considerable reduction in levels of tariff protection, very little of which could be recovered by rate adjustments. Such a course of action was unacceptable to its members. In its submission at the January hearing the Association again urged the Board to incorporate into its report the comment that the anticipated impact will certainly be much greater than can be compensated for by tariff rate adjustments.

After review of the Staff Appreciation of the Evidence, the CMA stated that the only obvious gain due to implementation of the Code is that administration of the new system will be more efficient.

On the subject of tariff items (notably T.I. 17800-1) where no representations were made the Association stated that the Board should recommend upward adjustments wherever justified regardless of whether or not such adjustments had been actively sought.

The CMA also stated that use should be made of the additive approach wherever it is possible.

The CMA in its written submission and oral evidence at the June hearing raised the question of the "deterrent effect". The Association argued that the fair-market-valuation system provided a significant deterrent effect against unfair and predatory pricing practises. This position was strongly supported by several other major participants at the June hearing.

CANADIAN TEXTILES INSTITUTE

The Canadian Textiles Institute (CTI) represented the primary textile industry. In 1981 the industry had factory shipments worth about \$6 billion, with 45 percent of its output being sold to the apparel industry and the rest going into home furnishings and industrial products. The CTI described the industry as complex and interdependent and noted that imports from all sources provide a significant level of total Canadian consumption of textiles. Developed countries provide 82 percent of Canada's primary textile imports with almost 70 percent of these imports originating in the USA. Because of its small size relative to the US textile industry, the Canadian industry has special problems which are compounded by the comparative openness of the Canadian economy. The CTI maintained that the Canadian industry is particularly vulnerable to market disruptions from disposal-priced goods resulting from over-production, style changes or seasonal clearances and from imports of goods of less-than-prime quality.

The chief concern of the CTI as pointed out in the June hearing was the proposed loss of ministerial prescriptions as these have been effective in dealing with many of the industry's particular import problems. In the Institute's view equally effective alternatives did not appear possible. The CTI, along with other participants at the public hearing, argued that there is a deterrent effect due to the ministerial prescriptions which cannot be compensated for by tariff uplifts. Valuation investigations in foreign countries have a spin-off effect and it is impossible to quantify the loss of this type of protection. The Institute argued that the industry's problems are not easily or successfully dealt with by anti-dumping legislation because they are style-related, sporadic and of short-term duration. The CTI claimed that the anti-dumping system in Canada has provided effective relief from only a minor fraction of unfairly priced textile imports and that the valuation legislation and investigations have always been the first bulwark against dumping for the textile industry.

According to the CTI, textiles are a special case in international trade and are recognized as such by the signatories of GATT, the Multifibre Agreement being proof of this. The Institute maintained that under the Canadian reservation to the GATT agreement on customs valuation Canada is not obliged to implement the agreement since this cannot be done without reducing

the level of tariff protection previously granted to the Canadian industry. The CTI requested that the proposed legislation should not be used for valuing textile imports into Canada and recommended that the existing fair-market-value system be retained for this purpose until the next round of multilateral trade negotiations. It also recommended that the treatment of freight in the existing system continue unchanged.

The CTI found that the whole approach of the background paper was to sweep the Canadian reservation under the rug and to ignore the deterrent effect of the fair-market-value system. It contended that the implementation of the proposed transaction value system raises a whole range of problems in addition to customs valuation which have not been adequately dealt with in the background paper. Strict numerical uplifts resulting from a simple averaging across a whole tariff item would not be satisfactory, particularly when applied to problems not in the normal course of trade.

The Institute stated that no major prescriptions of interest to the industry have been issued since April, 1979, but many of those of interest issued prior to that date have since been modified. In Table II of the background paper, the ministerial prescriptions dealing with apparel were of indirect interest to the CTI. However, the prescriptions in Table III on cotton fabrics, worsted fabrics, converted fabrics, cotton corduroy piece goods, work gloves, elastic braid and ex-quota shipments of cotton yarn were of direct interest to its members.

The CTI expressed its support for two of the recommendations made by the Tariff Board in its report on Part I of this reference. It agreed wholeheartedly with the recommendation that National Revenue take a much more active role in dealing with special import problems. For this to happen, the CTI noted that the government would have to issue directives to that effect. It also agreed with the recommendation that ministerial prescriptions should continue to apply for dumped imports from state-controlled economies.

The CTI acknowledged that the worst instances of the problems it cited might be dealt with under a Special Import Measures Act, but warned that it should not be assumed that such an Act will effectively address the majority of these problems.

The Institute supported the position taken by the Canadian Manufacturers' Association and suggested that Canada adopt the valuation agreement for those products (other than textiles) where the problems addressed by valuations and ministerial prescriptions are non-existent or of little importance to domestic industry.

In its submission at the January hearing the Institute stated that it saw no indication of a realistic alternative for these long standing measures nor had the recent Report of the Subcommittee on Import Policy made any recommendations on this point.

CARSILCO INTERNATIONAL LIMITED AND FLAM TEXTILES LIMITED

Carsilco International Limited and Flam Textile Limited are importing wholesalers of textile fabrics who supported the position of the Japan Silk and Synthetic Textile Exporters Association. At the June hearing, they opposed any tariff rate increases on textile yarns or fabrics and, in particular, the proposals for such increases by Dominion Textiles Inc., DuPont Canada Inc. Fibres Group, and the Canadian Textiles Institute.

Prior to the January hearing, Carsilco notified the Board of its support for the Staff Appreciation of the Evidence. Carsilco agreed with the general thrust of possible solutions in Chapter III and continued to oppose any proposals for tariff rate increases made by the Canadian Textiles Institute.

CHAMPION ROAD MACHINERY GROUP LIMITED

Champion Road Machinery Group Limited is the oldest manufacturer of construction equipment in Canada and it specializes in the production of motor graders. In the submission for the January hearing Champion stated that much of its success can be directly attributable to the tariff protection provided to the industry in Canada. The company took the position that the Canadian tariff on motor graders cannot be labelled "protectionist" particularly in light of other much greater impediments and restrictions placed on those imported by other nations. Champion believed that the moderate or low Canadian tariff already in existence had helped and will aid Champion's continued growth programs.

Champion argued that the progressive tariff rate reductions will impede the company's ability to remain as profitable as in the past. This would effectively slow down domestic research and development and other investment.

The company urged the Board to consider recommending the possible upward adjustment for graders.

C-I-L INC.

C-I-L Inc. submitted a brief for the January hearing and requested that the Board recommend the creation of two new tariff items for CITC 423-33-20 Polyethylene resin low density and CITC 423-33-40 Polyethylene resin high density for which the Tokyo Round rate of 9.5 p.c. plus adjustments of 0.5 p.c. and 0.7 p.c. respectively would apply. C-I-L considered that this additional protection will be necessary to deter imports because of the valuation actions on these items during the review period and the forecast overcapacity in the industry in the next few years.

CLEYN & TINKER INTERNATIONAL

Cleyn & Tinker International, representing worsted and woolens producers, asked the Board at the June hearing to remember that not all of the Canadian textile industry is involved with or worried about imports from the United States alone. For those in the worsteds and woolens sector of the textile industry the particular concern is with imports from the Pacific rim, i.e., Japan, the Republic of Korea, the People's Republic of China, and more recently, from certain South American sources.

DOFASCO INC.

Dofasco Inc. submitted a brief for the June hearing supporting the views expressed by the Canadian Manufacturers' Association. Dofasco representatives participated in the preparation of the CMA submissions for both public hearings.

DOMINION TEXTILE INC.

Dominion Textile Inc. supported the positions presented at the June hearing by the Canadian Manufacturers' Association and the Canadian Textiles Institute. The company also declared its interest in the continuing viability of the Canadian apparel industry.

Dominion Textile had been unable to quantify the loss of tariff protection it anticipated would result from adoption of the proposed transaction value system from the data available. The company concluded, however, that only a minor part of the loss had been taken into consideration in the background paper. It maintained that the indirect impact of valuation reviews and ministerial prescriptions could not be measured precisely or even estimated and thus the full protective impact of the current valuation system was not reflected in the background paper.

Dominion Textile recommended the adoption of the transaction value system where the impact of the change in valuation is not significant. However, in certain sectors, such as textiles, where tariffs are relatively high and where ministerial prescriptions have been used frequently in the past to combat end-of-season close-outs, sales of sub-standards and seconds and periodic predatory selling, the company recommended that Canada retain the fair-market-value system until such time as compensation can be negotiated with other countries for the full loss that would result from the change.

One of the major problems facing Dominion Textile is that most Canadian imports of styled cotton and polyester/cotton woven fabrics originate in the United States. Since much of the United States has an earlier spring and summer, US producers are thus encouraged to dispose of their seasonal mistakes in Canada. Five per cent of US production of a particular fabric generally equals the entire Canadian market requirements and these disposal sales can be very damaging. Dominion Textile asked the Board to consider the deterrent effect of the fair-market-value system in such pressured circumstances. The company claimed that frequent valuation reviews by Revenue Canada has ensured that goods are priced at proper fair market values to avoid retroactive revaluation. This has contributed up to as much as a 15 per cent increase in the stated value for duty. The company had not found anti-dumping actions to be as effective. In addition, Dominion Textile maintained that more than 50 per cent of Canada's imports in primary textiles are from developed countries and for these goods, the tariff uplifts required to compensate for the loss of the deterrent effect of the present valuation system would have to be much larger than indicated in the background paper.

Dominion Textile did not think that creating separate tariff items for some goods would be useful. It would not have the effect of a value for duty investigation which could put foreign producers and related importers on their guard against understating the value of their transactions. The company also thought rate adjustments could not be calculated at this time and would be unsatisfactory in any case.

DU PONT CANADA INC. - CHEMICALS GROUP, PLASTICS AND FILMS GROUP

Du Pont Canada's Chemicals Group and the Plastics and Films Group presented a submission regarding polyamide film, various polyethylene products, woven polyolefin fabric items, fluorocarbons and adipic acid.

Du Pont claimed at the June hearing that each of these items had, at one time or another, come under significant import pressure due to foreign excess capacity, dumping, disposal of obsolete or off-quality goods, or a selling price lower than fair market value in related party transactions. Currently there were no problems with imports of chemicals and plastics but Du Pont considered the woven polyolefins closer in nature to textiles and contended these items were subject to the same problems as its textiles (see below). However, the company expressed its concern over the possible loss of protection for all the above-mentioned products. Du Pont claimed an increase in the tariff rates or the creation of separate tariff items would be necessary to compensate for this loss.

Du Pont also expressed support for the more general brief submitted by the Canadian Manufacturers' Association.

In a submission for the January hearing Dupont stated that it supported those rate adjustments and new tariff items outlined in the Staff Appreciation of the Evidence.

DU PONT CANADA INC. - FIBRES GROUP

Du Pont Canada Inc. also made a submission to the June hearing on behalf of its Fibres Group which manufactures a variety of synthetic fibres and yarns. In 1981 the sales of these products accounted for 34 per cent of the company's total sales of \$1.139 billion. Du Pont Fibres Group strongly supported the position taken by the Canadian Manufacturers' Association and by the Canadian Textiles Institute stressing the capability of the current valuation system to offer domestic producers protection particularly against dumping, through the use of ministerial prescriptions and the ability to conduct valuation investigations. Du Pont maintained that the present valuation system is the first defence against dumping, and that the proposed Special Import Measures Act has no answer to the loss of ministerial prescriptions nor to the problem of second-level dumping which is common to the textiles industry.

Du Pont produced confidential evidence concerning imports from its US parent showing transaction prices below fair market values. The company maintained there is a well established two-tier pricing system for fibres and introduction of the transaction system of valuation will inevitably result in a loss of tariff protection and revenue to the Crown. Du Pont recommended that new tariff items be created based on CITC commodity code descriptions 366-39-79, 366-39-80, 366-99-45 and 246-37-90 and proposed higher rates of duty for these.

Du Pont also asked the Board to look at valuation rulings which came into effect after 1979 and cited a 1980 investigation that for commercial reasons had not been instituted earlier although the undervaluation had existed prior to 1980.

Dupont reiterated these concerns once again in the evidence it submitted for the January hearing. With respect to the question of freight, the Minister decreed that freight within the country of export was not to be included in the transaction value. Dupont believes this would lead to a loss of protection and Crown revenue because fibres are normally sold at a common delivered price.

ELECTRICAL AND ELECTRONIC MANUFACTURERS' ASSOCIATION OF CANADA

The Electrical and Electronic Manufacturers' Association of Canada (EEMAC) represents 250 manufacturers whose products fall into six major sectors: heavy electrical equipment, wire and cable, major appliances, small appliances, electronic products and miscellaneous products. Canada is a major producer and consumer of electrical energy. At the June hearing, EEMAC stressed that Canadian manufacturers operate in a climate of intensive price competition from imports which in many cases have been sold below fair market value and, therefore, its members will face a major loss of tariff protection with implementation of the transaction value system. The Association maintained that Canada's trade balance has deteriorated in each product sector since 1965 and that this was partially attributable to the tariff concessions made by Canada in the Kennedy Round. The trade deficit for 1980 in electrical products alone was \$1.1 billion even though exports exceeded \$600 million. EEMAC claimed the domestic industry faced tariff reductions by 1981 of up to 44 per cent as a result of the Tokyo Round tariff concessions.

A major problem cited by EEMAC is that Canadian producers face significant non-tariff barriers in every important international market including the USA, the EEC, and Japan. These three countries account for more than 80 per cent of world production of heavy electrical equipment and they have either refused to open their markets for heavy electrical apparatus and telecommunications equipment under the GATT Agreement on Government Procurement or else they have domestic policies which negate the intent of the code, e.g., Buy American legislation. Meanwhile the Canadian market is open to freewheeling international bidding which encourages dual-pricing. Dual-pricing is a practice whereby foreign producers sell at high prices in a closed home market while selling at low prices in an export market like Canada. EEMAC argued that the fair-market-value system provides some protection against dual-pricing and this will be eliminated with the adoption of the transaction value system.

The Association was disappointed with the Board's background paper and considered that it reflected a narrow and unrealistic view of the prospective loss of tariff protection facing the industry. An analysis by the Board of the full extent of the spreads between fair market value and transaction value had not been included. EEMAC maintained that the possible adjustment figures indicated in the background paper were inappropriate since only imports from the USA were shown to contribute to the prospective loss of tariff protection. EEMAC cited 14 anti-dumping cases which showed valuation problems with Europe, Japan, the USSR, and various low-wage countries. The Association noted as an example one tariff item with a possible upward adjustment of 0.001 per cent where imports from the US in 1978 accounted for only 13 per cent of the total while the EEC and Japan had accounted for 39 and 34 per cent respectively. In another case EEMAC contended that one contract alone could produce an impact a thousand times greater than the possible adjustment suggested in the background paper. The Association argued that the Board's procedure washed away any real effect of the value-for-duty rulings directed at a particular exporter or exporting country by diluting them with a much larger volume of transactions where the selling price had been accepted as the value for duty. Tariff item 44524-1 was cited as a tariff item where

the possible adjustment figure grossly understated the tariff protection to be lost if the proposed legislation is implemented. EEMAC maintained that the deterrent effect of Canada's valuation system is a factor in a foreign competitor's bidding and, therefore, is part of the tariff protection of the industry. This aspect of the present valuation system had been ignored in the background paper.

To illustrate the international trading practices affecting its members, EEMAC provided the Board during the June hearing with some specific examples of dual-pricing. One of these showed 18 actual export transactions of heavy electrical equipment from one country and nine winning bids on similar equipment in that country's home market. The data showed an average difference between export price and domestic price of 42 per cent.

EEMAC requested that the Board consider either including all the products of interest to its members in an exemption to the Valuation Code, as proposed by the Canadian Manufacturers' Association, or consider a much finer subdivision of the tariff schedule in combination with selective tariff rate increases to adjust for the anticipated loss of tariff protection. EEMAC also asked the Board to take account of two factors omitted from the possible adjustment figures outlined in the background paper. These factors are the prevalence of large differences between fair market value and transaction value in the industry and the deterrent effect of the valuation system on exporters dumping in the Canadian market. The Association urged the Board to obtain and analyse all relevant information relating to the margins of dumping in the 14 anti-dumping cases cited. The June submission stated that the value of electrical and electronic products to be supplied to major projects in Canada over the next 18 years has been estimated to be \$40 billion. In light of this EEMAC argued that it is essential for the Canadian government to provide effective legislation against predatory international trading practices and to ensure that the adoption of the Valuation Code entails no further loss of tariff protection.

Prior to the January hearing EEMAC noted that the Staff Appreciation of the Evidence had not indicated any change in the staff's approach which would resolve the issues of concern to EEMAC. EEMAC stressed that these issues are real and asked the Board to reconsider them and to ensure that the Board's recommendations on Part II of the reference will not diminish the tariff protection otherwise available.

HOME FURNISHING INDUSTRIES ASSOCIATION

The concerns of the Home Furnishing Industries Association at the June hearing were roughly similar to those of the Canadian Apparel Manufacturers Institute. The Association stated that, as the representative of the major non-integrated producers of draperies, bedspreads and curtains, their main problem was with merchandise sold at distressed prices from the USA. The Association noted that the prescription for other-than-prime quality merchandise will be lost under the transaction value system.

The Association did not propose any tariff rate increases on its members' products and it opposed any tariff increases on imported textile fabrics. However, in the event of tariff rate increases being proposed for its members' inputs, the Association may wish to change its position with regard to their own products.

HONDA CANADA INC.

Honda Canada Inc., an importer of gasoline engine powered vehicles and equipment, is a member of and fully supported the presentation made by the Motorcycle and Moped Industry Council and the Canadian Importers Association. At the June hearing Honda argued that there should be no upward adjustment in tariff rates as a result of the changeover to the new system for its products. Honda noted that in the background paper the declared selling price was generally interpreted as being equivalent in future to the transaction value. However, Honda argued that for most of its products the declared selling price would not necessarily be acceptable as the transaction value since these are transactions between related companies. In such instances a computed method of valuation could result in even higher values than anticipated in the background paper. This point was restated in the submission for the January hearing. Thus, the tariff adjustments in the background paper may not be accurate.

Honda contended that the fair-market-value system provides values for duty that closely approximate transaction values between related parties. In support of this Honda cited statements made to the Board by the Canadian Manufacturers' Association, the Japan Silk and Synthetic Textile Exporters' Association, and the Rubber Association of Canada, that there will be no need for an upward tariff rate adjustment on those commodities which are traded between related parties.

Honda also agreed with a point made by several other participants that the calculations should not be limited to 1978 customs entries but should include all entries and rulings made to December, 1984. For those cases where the computed method of valuation for transactions between related parties results in values higher than the current fair market value, Honda proposed that the Board recommend a tariff rate reduction.

Honda imports products under seven different tariff items, but expressed concern particularly for tariff items 43803-1 and 43839-1 covering automobiles and motorcycles respectively.

At the January hearing, Honda stated that a minor tariff rate increase for automobiles would offer no protection to Canadian industry. Therefore, there should be no increase in the rate of duty for tariff item 43803-1.

In addition, Honda expressed concern about what they term power products (lawn mowers, 42505-1; outboard motors and small engines, 42700-1; water pumps, 42701-1; and generators, 44514-1). Honda stated that the proposed rate increases will result in insignificant levels of protection for the Canadian industry.

Honda argued, as well, that due to the lack of representations made by Canadian producers arguing for higher rate increases, there should be no rate increases applied to power products and automobiles.

THE JAPAN SILK AND SYNTHETIC TEXTILE EXPORTERS' ASSOCIATION

The members of The Japan Silk and Synthetic Textile Exporters' Association export textile yarns and fabrics to Canada. According to the evidence presented by the Association at the June hearing, while others may

benefit significantly from lower tariff rates under the new valuation system its members likely will not since selling prices between related companies will not be accepted automatically by Customs officials. Related party transactions account for approximately 60 per cent by volume of the textiles exported by Association members. The Association expressed the view that their transactions will be subject to a number of tests or procedures which seem to be designed to maintain the protection offered by the existing Canadian valuation system.

The Association noted that at the June hearing DuPont Canada Inc. Fibres Group had proposed increasing tariff rates on certain nylon fabrics and yarns, and yarns containing spandex. It was noted, however, that Dupont based its calculations for the increases on undervaluation detected on its own imports from its parent company in the USA. The Association argued that DuPont had not demonstrated any undervaluation on similar imports from Japan.

The Association also opposed the position taken by Dominion Textile Inc. and the Canadian Textiles Institute in seeking an exemption for their products from the provisions of the proposed transaction value system. The Association thought there is already an effective range of trade policy tools to deal with injurious import competition and that the Canadian Textiles Institute uses them effectively. The Association pointed out that tariffs on imports of finished textile products are among the highest in the Canadian Customs Tariff while those on textile raw material inputs are among the lowest.

The Association considered the question of adjusting tariff rates for revenue purposes as a matter to be settled between the Canadian and Japanese governments. However, if such adjustments affect its members, they might seek compensation under Article XXVIII of the GATT.

The Association advised the Board at the January hearing that it supported the Staff Appreciation of the Evidence. It agreed with the general thrust of the possible solutions in Chapter III and continued to oppose any proposals for tariff rate increases from the Canadian Textiles Institute.

KAMLOOPS CUSTOMS BROKERS (1974) LTD.

Kamloops Customs Brokers (1974) Ltd. submitted a brief prior to the January hearing commending the Board on its insight into the complex problems of trade. Kamloops considered the Canada Customs Invoice (CCI) a confusing document and maintained that the majority of vendors and exporters do not understand the meaning of fair market value, invariably giving the transaction value or selling price instead. Kamloops found that many factors from the bill of sale that may be dutiable factors are not shown on the CCI's because the exporter feels they are irrelevant. Kamloops recommended using the commercial invoice or bill of sale rather than the CCI and thought this would solve many problems for the exporter, importer and Customs and Excise.

The brief agreed that some protection is provided by the fair-market-value system for Canadian industries, but only a bare minimum. Companies suffering adversely from imports can protest by means of anti-dumping action or by seeking countervailing duties. The submission contended that the Board's research had uncovered facts proving that the fair-market-value system is ineffective at providing protection to Canadian industries.

Kamloops warned against creating a new monster of over-protectionism in the form of too many exceptions to the proposed transaction value system. It was the firm's opinion that the Government will have to be very astute not to be swayed by some Canadian industries who blame imports for their problems, but who have not kept up to technological changes or maintained efficient management practices.

LUBERTEX INC.

LUBERTEX Inc. is primarily an importer of unfinished cotton and polyester cotton fabrics for both industrial and apparel uses. At the June hearing LUBERTEX opposed any tariff rate increases on textile yarns or fabrics resulting from implementation of the transaction value system.

MICHELIN TIRES (CANADA) LIMITED

Michelin Tires (Canada) Limited favoured the abolition of tariffs as a general principle. As a new member of the Rubber Association of Canada, Michelin did not participate in the preparation of the Association's submissions to the Board on this reference. At the June hearing, the Association recommended against the implementation of the full tariff reduction on tires (tariff item 61815-1) in order to compensate for the expected loss of protection under the new valuation system. Michelin did not concur with this recommendation. Michelin was concerned that it may be adversely affected by the new system because it imports tires from related parties. Under the proposed valuation system, transactions between related parties may be investigated and values for duty can be adjusted.

Michelin also opposed the recommendations at the June hearing made by Du Pont Canada Inc., Dominion Textile Inc. and the Canadian Textiles Institute that the GATT Valuation Code not be adopted for textile products. Implementation of such recommendations would result in increased protection for tire cord fabrics and other textile products used by Michelin in the production of tires. Michelin considered recommendations for opting out of Canada's obligations under the GATT Code to be outside the scope of this reference.

Although Michelin did not testify at the January hearing, it did inform the Board beforehand of its support for the Staff Appreciation of the Evidence. In particular, Michelin agreed with the general thrust of the possible solutions in Chapter III and continued to oppose any proposals for tariff rate increases from either the Rubber Association of Canada or the Canadian Textiles Institute.

MOTORCYCLE & MOPED INDUSTRY COUNCIL

The Motorcycle & Moped Industry Council (MMIC) represents seven members who account for approximately 99 per cent of all motorcycles sold in Canada, with four Japanese members being the source of over 90 per cent of this total. The Council's brief for the June hearing commented specifically on the adjustment figure in the background paper for tariff item 43839-1 on motorcycles over 250 cc's. The Council considered the proposed 1.065 per cent adjustment to be an excessively large increase since the tariff on motorcycles is scheduled to drop several percentage points by 1987.

Further, the MMIC maintained it was unrealistic to use 1978 fair market values and transaction prices to establish a formula adjustment because motorcycles are products which change substantially from year to year. The products in 1985 will be quite different from the 1978 ones used to calculate the adjustment.

The Council also argued that the adjustment would be inappropriate because the four Japanese members will have related party status and the value for duty of their goods may be calculated by alternative methods of appraisal. However, the effect of these alternative methods of appraisal is unknown. In a similar vein, the Council noted that two other members would suffer disproportionately larger financial penalties from the indicated possible adjustment because they import higher priced machines.

The Council asked the Board to re-examine the current domestic manufacture of motorcycles in Canada to determine whether a protective tariff is warranted since the sole Canadian manufacturer does not compete directly with imports in most of the major sales areas.

THE RUBBER ASSOCIATION OF CANADA

The Rubber Association of Canada (RAC) includes as members the major producers of rubber products in Canada. In its presentation at the June hearing the Association represented all of its members except Michelin Tires (Canada) Limited. The RAC expressed two major concerns. First, destructive imports such as end-of-line goods, job lots, off-spec disposal items, and goods of less-than-prime quality which are presently inhibited by the Customs Act will be encouraged to flow freely into Canada under the proposed legislation. The second concern is that, under the transaction value system and in the absence of compensatory rate increases, exporters and importers will be able to reduce very substantially the value for duty of a wide range of goods. The Association argued that imported goods could be priced lower than domestic goods because some cost components which are included in domestic prices are excluded when the same goods are exported.

In its January submission, the Association stated that a reduction of tariff protection resulting from the GATT Tokyo Round will undoubtedly attract additional import competition in the Canadian market and may well induce some companies to abandon Canadian production in favour of imports.

The Association maintained that the possible rate increases estimated in the background paper represent a totally unrealistic view of the compensatory rate increases required to maintain the same level of tariff protection under the transaction value system as is now available under the fair-market-value system. The Association proposed the following rate increases:

<u>Tariff Item</u>	<u>Compensatory Rate Increase Required</u>
61000-1 belting	6.1
61815-1 tires and tubes	3.8
61815-2 off-highway tires, etc.	3.4
61900-1 hose, etc.	5.7

This recommendation was based on confidential data submitted to the Board. Each firm estimated the loss of protection on its own imports from related companies for the period July, 1978 to March, 1979 as if the transaction value system had been in force at that time. The upward adjustment was based on the firms' knowledge of US law as currently applied to Canadian exports to the US.

The Association expected the loss of tariff protection resulting from the proposed transaction valuation system to be greatest for imports of rubber products from unrelated exporters in Japan, Europe and the USA. Tires were cited as the more important item for the industry since they constitute about 80 per cent of output. Job lots and end-of-line tire imports were seen as significant and recurring problems but the proportion of the total Canadian market affected by these problems was unknown. Retreads were also seen as a concern for the future, but not a major one for the moment. The Association stated that almost 90 per cent of the tires imported by Association members (excluding Michelin) are covered by value-for-duty rulings. At the January hearing the Association recommended that the Board consider the approach which was adopted by the United States, restoring the duty rate to its original level coincidental with implementation of the new valuation system.

In respect of belting and hose the RAC reaffirmed its concern about imports of less-than-prime quality goods since significant quantities of off-spec belting were entering Canada.

The Association supported the proposal expressed by others that the Board should consider fair-market-value rulings from April, 1979 right up until December, 1984.

The Association asked the Board to either provide effective solutions, particularly for the problems of irrational valuation of goods from state-controlled economies, job lots, and other disposals of unwanted international production, or to recommend that the Government should not fully implement the GATT Valuation Agreement. The Association stressed that it was not trying to recover the tariff concessions lost in the last round of the multilateral trade negotiations, that it was just trying to ensure that no further protection would be lost.

SHOE MANUFACTURERS' ASSOCIATION OF CANADA

The Shoe Manufacturers' Association of Canada (SMAC) stated in its brief submitted to the Board for the June hearing that more than 75 percent of the footwear imported into Canada is valued for customs on the basis of ministerial prescriptions. SMAC maintained that the proposed change of valuation systems cannot be made without a substantial loss of tariff protection for the industry. Thus, its fundamental position for Part I of the reference remained unchanged for Part II: Canada should exempt footwear imports from the Valuation Code and retain the authority to use ministerial prescriptions. In addition, the Association argued that the transaction value of dumped or subsidized goods should not be accepted as value for duty. SMAC recognized that the Code had been signed and that the Board to date took its implementation as a fait accompli.

At the hearing in June SMAC noted that although it had no part in the development of the Canadian Manufacturers' Association's position, it strongly supported the CMA's recommendation that the existing valuation system be

maintained. According to the Association, footwear imported under tariff items 61105-1, 61105-2, 61105-3, 61110-1 and 61700-1 clearly fulfilled the criteria suggested by the CMA for exempting goods from the Valuation Agreement. SMAC cited the U.S. "Final List" as a clear precedent for a partial exemption of this kind.

SMAC considered that the approach taken in the background paper seriously underestimated the negative consequences of the proposed transaction value system and urged a broader approach. As evidence that the data with respect to footwear imports presented in Tables I and II of the background paper were far from comprehensive, SMAC noted that no impact had been reported in the tables for footwear imports from Brazil. However, a ministerial prescription currently in effect subjects such imports to a 50 per cent advance in the value for duty. Further, a submission by the Department of Consumer and Corporate Affairs (CCA) to the Anti-dumping Tribunal in 1980 was totally at variance with the background paper's assessments of tariff protection. CCA had calculated that the effective rate of tariff protection ranged from 39.2 percent (Spain) to 64 percent (Brazil). On the other hand, the sum of the Board's possible adjustment figures added up to 0.7 per cent for tariff item 61105-1 and no figures were provided for other footwear items. SMAC totally disagreed with the basis for the Board's figures and recommended that the appropriate CCA officials be called to explain their conclusions before the Board and possibly to assist the Board in its calculations. From its own examination of footwear imports in 1978, SMAC had concluded that the nine ministerial prescriptions in effect at that time had increased the value for duty of Canadian imports of footwear by \$26.8 million. This was an overall increase of 10.55 per cent in the value for duty of these goods and would translate into a tariff rate adjustment of 2.64 percentage points for tariff items 61105-1, 61105-2, 61105-3, 61110-1 and 61700-1. The Association recommended that the Board include in its tariff adjustment figure a component of not less than 2.64 percentage points to compensate for the loss of country-specific prescriptions in force prior to April, 1979.

SMAC also expressed shock at the approach taken in the background paper to those imports not subject to footwear prescriptions prior to 1979, charging that it was narrow and biased against Canadian manufacturers. The Association's brief made the same point as several other submissions: the fair-market-value system has a deterrent effect, difficult to quantify, that has prevented foreign suppliers from selling to Canada at prices which would invite valuation complaints and re-appraisal. A further problem is that the footwear industry world-wide is extremely mobile. With the proposed valuation system, the Canadian industry will not have ministerial prescriptions to combat the problems of this mobility. SMAC noted that Tariff Board Reference 161 had come about as a result of the dramatic change which had occurred in the previous 15 months in the sourcing of rubber footwear to Canada. The Association recommended that the Board provide a tariff rate adjustment for the reduction in value for duty which will undoubtedly occur with respect to the broad range of footwear imports not subject to valuation rulings or prescriptions.

SMAC acknowledged that the main items of concern to the industry are the ministerial prescriptions in Table II of the background paper and the footwear prescriptions in Table III. It recommended that the Board also

provide, either by proposing effective legislation or tariff rate adjustments, for the prospective loss of general prescriptions dealing with some of the Association's other major concerns such as end-of-season clearances, end-of-line clearances, job lots, and goods of other-than-prime quality.

THE SOCIETY OF THE PLASTICS INDUSTRY OF CANADA

The Society of the Plastics Industry of Canada consists of approximately 1500 plastic processors who manufacture, process or fabricate plastic products. Eighty per cent of the domestic industry are small, Canadian owned firms with no foreign connection. However, a large segment of imports (1/4 - 1/3) are accounted for by transactions between related automotive companies, both car and parts manufacturers importing finished products. The Society noted that the United States accounts for almost 90 percent of imports of plastic products and that the trade deficit in 1981 was \$900 million.

At the hearing in June the Society expressed two major concerns about the background paper. One was that hundreds of imported plastics products were not subject to value-for-duty rulings during the period 1976 and 1979 and were not covered by the background paper and that these products may be severely affected by the change in valuation systems, although the Society is uncertain as to what exactly the effects will be. The Society's other concern is that, since the industry is relatively new and rapidly developing in terms of products, technology and equipment, products which did not exist in 1979 could in future enter Canada under substantially lower trade barriers.

The Society viewed the adoption of the new Valuation Code in 1985 as part and parcel of the overall GATT agreement and was of the opinion that the level of effective protection gained in GATT negotiations for their products must be maintained when the new Code comes into effect.

The Society shared with other industries the concern about sporadic dumping. The Society believed that the intent of the present anti-dumping system is fair to manufacturers in Canada but found the policing of sporadic dumping difficult. The Society recommended the strengthening of anti-dumping provisions by reducing the time required for anti-dumping actions and suggested that investigations should be initiated more frequently than in the past, preceded by requests to suspected firms to provide data in support of their pricing policies. The Society argued that Canadian manufacturers should have access to import information in order to monitor the terms on imports of products important to them and that more emphasis should be given to profitability as an indicator of future investment and jobs when assessing injury from dumping.

At the January hearing the Society indicated support for the CMA's recommendation on used goods, less-than-prime quality goods and distress priced merchandise. In addition the Society had one nagging concern, which is the effect of deterrents on the questioning of certain import shipments.

The Society considered that the information in the background paper was insufficient to allow it to make judgments on tariff rate levels, but it did think that adjustments for revenue purposes only would not make much sense. It would prefer assessing the tariff items individually for problems. Of particular interest to the Society are tariff items 93901-81, 93902-81, 93902-82 and 93907-1. The resin categories 93902-3, 93902-12, and 93902-75

are of primary interest to the chemicals industry but are also important to the plastics industry for which these resins are a basic raw material. The Society noted that the present tariff structure for plastic products does not adequately reflect the technology state of the industry.

STARPLEX SCIENTIFIC

Starplex Scientific, a Division of Canadian Medical Laboratories Limited, manufactures health care products which are mainly for treatment and diagnostic purposes as compared to pharmaceutical products. In its presentation to the Board at the June hearing Starplex expressed a general concern that recent gains made by Canadian health care manufacturers, due in large part to the present tariff structure, may be lost under the transaction valuation system.

Starplex stated that until the federal and provincial governments had instituted a "Buy Canadian" health care programme in 1981 large multinational firms had completely dominated the industry. As a result of tariff rate changes to tariff items 69605-1 and 89905-1, Starplex and other Canadian producers had made gains and their manufacturing business was beginning to flourish. Prior to July 1, 1981, growth by Canadian companies had been severely limited because of duty free imports of similar goods.

Starplex claimed that historically Canada has been the dumping ground for large multinationals and expressed concern that this may again become a problem. The firm was considering asking the federal government to change the exemption whereby its products are not eligible in all cases for protection under the Anti-dumping Act.

Although Starplex was not aware of any of its products having been subject to value-for-duty rulings or ministerial prescriptions, it strongly urged the Board to take all possible steps to maintain the existing levels of tariff protection. Where tariff rate adjustments are not practicable, Starplex suggested that Canada adopt a modified version of the GATT Tariff Agreement to maintain the levels of protection.

UNION CARBIDE CANADA LIMITED

Union Carbide Canada Limited (UCCL) made a submission to the Board prior to the January, 1983 hearing on the Staff Appreciation of the Evidence. UCCL supported the creation of two new tariff items for polyethylene resin low density and polyethylene resin high density with upward adjustments to the 9.5 p.c. Tokyo Round rate of 0.5 p.c. and 0.7 p.c. respectively. The company maintained that these products are subject to intense international price pressure and any increased protection would be helpful.

UCCL found that the staff's analysis recognized some of the problems of the polyethylene sheet/film industry, but that the narrow definition of the proposed new items weakened any resulting benefit. The company supported protecting polyethylene sheet, medium density/over .01" thick, but was concerned that the major polyethylene sheet/film products will be left relatively exposed. It recommended that polyethylene sheet/film that has been further manufactured be given additional protection by broadening the description of the proposed new item or by adding new items for high and low density polyethylene sheet/film.

Union Carbide opposed an increase of 1 p.c. to tariff item 44512-1, batteries, arguing that the resulting tariff rate would not provide effective protection to domestic manufacturers, but would increase the cost of imported parts and finished products. However, the proposed 0.3 p.c. increase under a new item, Batteries, parts of, nes, would increase the company's costs but was not of significant concern.

UCCL recommended splitting the proposed new item, Batteries, dry cell, nes (5.5 p.c. increase), into two items: one for miniature batteries, the other for carbon zinc batteries and standard alkaline batteries. Since miniature batteries are not made in Canada, UCCL opposed the 5.5 p.c. increase for this item maintaining that it would only raise the cost of the product while not providing sufficient protection to make the Canadian manufacture of these products financially viable. High quality carbon zinc batteries, on the other hand, are manufactured in Canada by UCCL and others. Union Carbide supported the proposed tariff rate increase for this product as it would offer greater protection from imports of low price/quality products.

Union Carbide's recommendation for the 5.5 p.c. tariff rate increase for standard alkaline batteries was based on the fact that imports are of increasing concern to the Canadian industry as foreign producers become more aggressive and as currencies move in their favour. All major standard alkaline batteries with the exception of the 9 volt size are manufactured in Canada by UCCL and others. Union Carbide argued that a 5.5 p.c. tariff increase would not prevent imports from entering the Canadian market, but would help the domestic industry particularly if foreign currencies increase in value.

UNIROYAL CHEMICAL DIVISION

The Uniroyal Chemical Division of Uniroyal Ltd. is the principal or sole Canadian manufacturer of many chemicals used in the rubber manufacturing industry and also of some agricultural and specialty chemicals. In its brief at the June hearing, Uniroyal Chemical Division claimed that many of its products are subject to intense import competition from Europe and the United States, and that the future viability of its operations depends on a continuation of the present tariff structure.

Using 1978-79 data from its parent company, Uniroyal compared the duty paid under the fair-market-value system to the estimated duty which would be paid under the transaction value system based on non-arm's length transactions where the computed method of valuation could apply. From this, the company estimated its loss of tariff protection under the transaction value system might be 20 per cent or more. Uniroyal concluded that such a loss would severely threaten continued production in Canada as it might then be cheaper for its US parent to supply the Canadian market. Uniroyal considered the computed or deducted methods of valuation for transactions between related parties to be inadequate to protect Canadian producers. In view of this analysis, Uniroyal recommended the creation of a new tariff item for organic chemical accelerators, antioxidants, antiozonants and retarders for rubber and plastic product, with a tariff rate for 1985-87 of 15 per cent.

In its submission to the January hearing the company stated that the Tariff Board should have compared the differences in the Canadian computed values versus the fair market values whether this has been asked for or not.

In addition the company expected reduced production to lead to plant closures and the lack of justification by multinationals for expansions in Canada. As a result these products will in future be imported into Canada large competitive U.S. plants or from other off-shore sources.

VOLKSWAGEN CANADA INC.

Volkswagen Canada stated at the January hearing that it supported the brief of the Automotive Importers Association. They stressed that the cost of an increase in tariff could only be passed on to the consumer and that the consumer is apparently willing to pay for his preference.

Volkswagen Canada did not necessarily support the general rhetoric and philosophy about tariffs as stated by the Automobile Importers Association.

WESTCLOX CANADA LIMITED

In its presentation at the June hearing , Westclox Canada Limited asked the Board to consider a new tariff item for keywound alarm clocks from communist countries with a higher rate of duty. Failing this, Westclox requested that alternate methods of protection be found that will maintain the current level of protection against these imports entering under tariff item 36800-1 when the ministerial prescription is rescinded.

Westclox claimed that the possible rate increases presented in the background paper would mean a complete loss of protection because tariff item 36800-1 covers so many goods in addition to keywound alarm clocks. Westclox maintained that, even in cases where the alternative methods of valuation may be used under the proposed transaction value system, these methods would not be effective in preserving the current levels of protection.

Westclox's primary concern was that the loss of protection it envisaged resulting from implementation of the proposed valuation system, when combined with pressure from new technology in the form of quartz battery alarm clocks, will be sufficient to drive it out of the keywound clock business. As the only clock manufacturer in Canada, Westclox employs approximately 150 people directly or indirectly in the production of keywound clocks. Westclox claimed that the clock market is still very much dominated by the keywound variety.

Westclox emphasized that the problem of import competition is like a brush fire that can pop up from various sources since production can be easily shifted from one state-controlled economy to another. For this reason ministerial prescriptions have been most effective. Westclox did not think that anti-dumping actions would be as effective as ministerial prescriptions and it urged the Board to find a means of protecting the industry under the proposed transaction value system in a manner similar in effect to the ministerial prescriptions.

CHAPTER III

CRITERIA, CONCLUSIONS AND RECOMMENDATIONS

As has been discussed in Chapter I, the Minister's letter of reference sets out two main issues for consideration by the Board. The primary issue is to provide advice on what, if any, tariff adjustments would be required to maintain the same level of protection under the proposed transaction system of customs valuation as is presently provided by the fair market system or, alternatively, to ensure that duties collected do not decline significantly. The second issue is whether such adjustments comprise the most appropriate or feasible means of providing the protection traditionally afforded by certain provisions of the fair-market-value system, particularly the Ministerial prescriptions. The Board reports its conclusions and recommendations separately on these two issues.

TARIFF ADJUSTMENTS

The Selection Criteria

As explained in the section in Chapter I on methodology, the Board carried out a study of a sample of customs documents for 599 goods which were subject to a value-for-duty investigation between January, 1976 and April, 1979, and for all goods whose values for duty were enhanced by means of Ministerial prescriptions under the present valuation system. This customs-entry study determined the degree, if any, to which the value for duty was raised by the valuation ruling or Ministerial prescription, thus providing a measure of the value for duty which will be lost by the adoption of the transaction value system of customs valuation, and hence the basis for the determination of possible compensatory rate adjustments.

The results of this customs-entry study were initially published as Tables I to IV in Reference No. 159. Background Paper, dated January 1982. These tables are reproduced in Appendix "B" of this report.⁽¹⁾ No attempt was made in that background document to establish how the information contained in it might be treated or interpreted. Rather, interested parties were requested to indicate the products of interest to them and to propose possible tariff adjustments or alternative tariff solutions. At the June, 1982 hearing some pertinent evidence on these issues was brought before the Board, although much of the submissions and presentations focussed again on whether or not Canada should adopt the new valuation system. Subsequently, in the light of the evidence presented at this hearing, criteria for determining which goods and tariff items might be made subject to adjustment, together with a list of possible adjustments, were published in Reference No. 159. Staff Appreciation of the Evidence,⁽²⁾ dated December 1982.

⁽¹⁾ See Appendix "B".

⁽²⁾ See Appendix "C".

On the basis of all the evidence gathered and presented, including the additional testimony received at the January, 1983 public hearing, the Board has decided to recommend only those rate adjustments which it has determined to be in excess of 0.1 percentage points (p.c.), and in this connection calculated adjustments of between 0.05 p.c. and 0.09 p.c. have been counted as 0.1 p.c. While the protective effect of such small adjustments would obviously be insignificant, their impact on customs revenues could be sizeable. Moreover, many tariff rates in Schedule "A" are, as a result of the gradual implementation of the MTN concession rates, already expressed in tenths of percentage points, and thus adjustments of less than 1 p.c. could be easily integrated into the existing tariff structure.

New tariff items will be recommended wherever the nomenclature of a new item can readily be confined to the goods subject to a value-for-duty ruling in the base period, provided at least 70 per cent of the total imports of the goods in the base period were affected by the valuation action. This will ensure that the proposed adjustment in the rate of duty is related as closely as possible to the level of protection provided by the valuation action under the fair-market-value system.

In those instances where the establishment of a new item is not feasible, usually because the good(s) are covered in a residual, "n.e.s." (not elsewhere specified) category in the CITC, the adjustment will be recommended for the current tariff item. In such instances, the amount of the adjustment will be derived by adding the rate adjustments of all goods subject to a valuation action covered by the item in question. The addition will take into account individual adjustments below 0.1 p.c., as long as the total rate adjustment is at least equal to 0.1 p.c. The Board will also recommend adjustments for tariff items from which goods for one or more new items have been extracted, providing that the adjustments pertaining to the remaining goods add up to at least the aforementioned minimum level. Recommended rate adjustments listed in the schedule below to which this criterion has been applied are indicated by an asterisk (*).

For many of the goods studied the applicable rates of duty have been reduced to Free by the MTN concessions. It is recognized that very low rates of duty serve only to harass trade. In order to establish a minimum rate adjustment for any goods subject to free entry in 1987, reference was made to Canada's schedule of MTN concessions.⁽³⁾ This showed that the lowest bound MTN concession rate was 0.5 p.c., applicable to tariff item 19245-1. The Board decided, therefore, to recommend adjustments only in those cases where the calculated adjustment is 0.5 p.c. or greater. In the event, only two items subject to consideration for adjustment have been reduced to Free by the MTN viz, tariff items 17100-1 and 41400-1. In both cases the calculated adjustments, 1.5 p.c. and 0.5 p.c. respectively, meet the Board's criteria and are included in the recommended adjustments.

(3) Department of Finance, Canada, Tariff Concessions Agreed by Canada in the Multilateral Trade Negotiations Under the General Agreement on Tariffs and Trade. June 1979.

The proposed new tariff items set out below are based on Schedule "A" of the Customs Tariff as it existed on January 1, 1983. There are some differences between this Schedule and that in effect on January 1, 1979, due mainly to changes emanating from the MTN. The rate adjustments indicated refer to additional percentage points of duty which should be added to the MFN rates of duty in effect on January 1, 1985, or on whatever date the proposed amendments may actually be implemented. For example, if the MFN rate is 7.5 p.c. and the recommended adjustment is 0.8 p.c. then the new rate should be 8.3 p.c. For many of the tariff items listed below no rate adjustments are proposed. These situations represent only consequential changes to tariff item numbers and/or nomenclature, due to the creation of new tariff items.

On the basis of these criteria, the Board recommends that the following nomenclature and rate of duty adjustments be made to Schedule "A" of the Customs Tariff as of the date of implementation of the amendments to sections 35 to 44 of the Customs Act giving effect to Canada's rights and obligations under the GATT Customs Valuation Agreement.

SCHEDULE OF RECOMMENDED TARIFF ADJUSTMENTS

<u>Tariff Items</u>	<u>Goods Subject to Duty</u>	<u>Rate Adjustment and Applicable 1983 Tariff Item</u>
14100-1	Sugar candy and confectionery, n.o.p., including sweetened gums, candied popcorn, candied nuts, flavouring powders, custard powders, jelly powders, sweetmeats, sweetened breads, cakes, pies, puddings and all other confections containing sugar	0.4 p.c* 14100-1
14100-2	Liquorice candy	1.4 p.c. 14100-1
14100-3	Toffee	1.1 p.c. 14100-1
14100-4	Nomenclature and rates of existing item 14100-2.	

<u>Tariff Items</u>	<u>Goods Subject to Duty</u>	<u>Rate Adjustment and Applicable 1983 Tariff Item</u>
17100-1	Books, printed, periodicals and pamphlets, or parts thereof, n.o.p., not to include blank account books, copy books, or books to be written or drawn upon	0.8 p.c.*
17700-1	Advertising catalogues	10.8 p.c. 17800-1
17800-1	Advertising and printed matter, viz.: Advertising pamphlets, advertising show cards, illustrated advertising periodicals; catalogues, n.o.p., price lists and price books; advertising almanacs and calendars; patent medicine or other advertising circular, fly sheets or pamphlets; advertising chromos, chromotypes, oleographs or like work produced by any process other than hand painting or drawing, and having any advertisement or advertising matter printed, lithographed or stamped thereon, or attached thereto, including advertising bills, folders and posters, or other similar artistic work, lithographed, printed or stamped on paper or cardboard for business or advertisement purposes n.o.p.	5.4 p.c.* 17800-1
17800-2 and 17800-3	Consequential change: "specified in item 17800-1" to "specified in item 17700-1 or 17800-1".	
18030-1	Plans and drawings, related specifications, any substitute therefor, reproductions of the foregoing, n.o.p.; maps and charts, n.o.p.	0.9 p.c.*
18100-1	Bank notes, bonds, bills of exchange, cheques, promissory notes, drafts and all similar work, unsigned, and cards or other commercial blank forms printed or lithographed, or printed from steel or copper or other plates; printed matter, n.o.p.	1.6 p.c.*

<u>Tariff Items</u>	<u>Goods Subject to Duty</u>	<u>Rate Adjustment and Applicable 1983 Tariff Item</u>
18700-1	Albumenized and other papers, textile fabrics and films, n.o.p.; all the foregoing chemically prepared for photographers' use	0.3 p.c.*
18701-1	Microfilm, unexposed	1.8 p.c. 18702-1

	Tarred paper and prepared roofings (including shingles), fibreboard, strawboard, sheathing and insulation, manufactured wholly or in part of vegetable fibres, n.o.p.; blotting paper, not printed or illustrated:	
19200-1 to 19200-4	Nomenclature and rates of existing items 19100-1 to 19100-4.	
19200-5	Gypsum wallboard	0.3 p.c. 19200-1

19900-3	Box files, paper or paperboard	1.7 p.c. 19900-1
19900-4	Printed envelopes, not padded, excluding envelopes for seeds	0.7 p.c. 19900-1
19910-1	Containers wholly or partially manufactured from fibreboard or paperboard, n.o.p. ...	0.3 p.c.*
19910-2	Paperboard boxes or cartons for cosmetic products	0.5 p.c. 19910-1
22001-1	All medicinal and pharmaceutical preparations, compounded of more than one substance, whether or not containing alcohol, including patent and proprietary preparations, tinctures, pills, powders, troches, lozenges, filled capsules, tablets, syrups, cordials, bitters, anodynes, tonics, plasters, liniments, salves, ointments, pastes, drops, waters, essences and oils	0.4 p.c.*

Tariff Items	Goods Subject to Duty	Rate Adjustment and Applicable 1983 Tariff Item
23400-1	Perfumery, including toilet preparations, non-alcoholic, namely: hair oils, tooth and other powders and washes, pomatums, pastes and all other perfumed preparations, n.o.p., used for the hair, mouth or skin	1.2 p.c.*
28900-1	Baths, bathtubs, basins, closets, closet seats and covers, closet tanks, lavatories, urinals, sinks and laundry tubs of earthenware, stone, cement, clay or other material, n.o.p.	0.1 p.c.*
32603-1	Demijohns or carboys, bottles, flasks, phials, jars and balls, of glass, not cut, n.o.p.; lamp chimneys of glass, n.o.p.	0.1 p.c.*
35200-1	Brass and copper nails, tacks, rivets and burrs or washers; bells and gongs, n.o.p.; and manufactures of brass or copper, n.o.p.	0.1 p.c.*
35400-1	Manufactures of aluminum, n.o.p.	0.1 p.c.*
40000-1	----- Fittings and couplings of iron or steel, n.o.p.; for pipes and tubes; parts therefor: Alloy	0.1 p.c.*
40000-2	Other	0.1 p.c.*
41400-1	----- Typewriters	0.5 p.c.*
	----- Electric vacuum cleaners and attachments therefor; hand vacuum cleaners; and complete parts of all the foregoing, including suction hose, n.o.p.:	

<u>Tariff Items</u>	<u>Goods Subject to Duty</u>	<u>Rate Adjustment and Applicable 1983 Tariff Item</u>
41500-1	Other than the following	Nil 41500-1
41500-2	Commercial or industrial vacuum cleaners ..	0.1 p.c. 41500-1
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Refrigerators and combination refrigerator-freezers, domestic or store, completely equipped or not:		
41505-1	Domestic, electric, with refrigerator capacity of not less than 13.5 cu. ft.	0.2 p.c. 41505-1
41505-2	Domestic, other	Nil 41505-1
41505-3	Nomenclature and rates of existing item 41505-2.	
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Washing machines, domestic, with or without motive power incorporated therein; complete parts of washing machines:		
41515-1	Other than the following	Nil 41515-1
41516-1	Electric washing machines	Nil 41515-1
41517-1	Complete parts of goods enumerated in tariff item 41516-1	0.1 p.c. 41515-1
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<u>Tariff Items</u>	<u>Goods Subject to Duty</u>	<u>Rate Adjustment and Applicable 1983 Tariff Item</u>
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	Machines, n.o.p., and accessories, attachments, control equipment and tools for use therewith; parts of the foregoing:	
42700-1 to 42700-4	Nomenclature and rates of existing items 42700-1 to 42700-4.	
42700-5	Household machines, electric motor driven, including knives, knife sharpeners, floor polishers, humidifiers, air conditioners, tooth brushes, can openers, hair dryers, food mixers, food blenders, food grinders, food choppers, garbage disposal units, portable dishwashers, shoe polishers, clothes brushes, massagers, and combinations thereof; accessories, attachments, control equipment and tools for use therewith; parts of the foregoing, not including parts of food mixers	Nil 42700-5
42700-6 to 42700-9	Nomenclature and rates of existing items 42700-6 to 42700-9.	
42700-10	Parts of portable air compressors	3.2 p.c. 42700-1
42700-11	Electric dishwashers, household, n.o.p. ...	1.9 p.c. 42700-5
42700-12	Parts of food mixers enumerated in tariff item 42700-5	0.7 p.c. 42700-5
42700-13	Vending machines for hot or cold beverages, ice cream or cigarettes	Nil 42700-1
42700-14	Candy vending machines	0.8 p.c. 42700-1

<u>Tariff Items</u>	<u>Goods Subject to Duty</u>	<u>Rate Adjustment and Applicable 1983 Tariff Item</u>
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42700-15	Vending machines, n.o.p.	0.5 p.c. 42700-1
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Note: Place after item 42700-15 the foot-
note now following item 42700-9 and
change "and 42700-9" to ", 42700-9,
42700-10, 42700-11, 42700-12,
42700-13, 42700-14 and 42700-15".
(Machinery Program)

Articles which otherwise would be classified
under tariff items 42700-1 to 42700-4,
namely: compressor sets, electricity
generating sets, fork lift trucks, front-
end loaders or tractor shovels, gear
reducers, pumps and pump sets, motor oper-
ated valves, positive displacement blowers
and vacuum pumps, metal working lathes,
metal working milling machines, cutting
tools for use with metal working machines,
articulated folding boom-type cranes
designed for mounting on trucks; acces-
sories, attachments and control equipment
for use therewith; parts of the foregoing:

42701-1	Nomenclature of existing item	0.2 p.c.*
42701-2	Nomenclature and rates of existing item.	
42701-3	Factory or warehouse fork lift trucks, powered by liquefied petroleum gas	0.3 p.c. 42701-1

Note: Place footnote now after item
42701-2 after item 42701-3 and
amend "42701-1 and 42701-2" to
"42701-1, 42701-2 and 42701-3".
(Machinery Program)

<u>Tariff Items</u>	<u>Goods Subject to Duty</u>	<u>Rate Adjustment and Applicable 1983 Tariff Item</u>
43910-1	Cars, n.o.p., travel trailers, tent trailers and tent campers, snowmobile, utility, and boat trailers, non-commercial horse trailers, trailers for use as permanent mountings for machinery or equipment, wheelbarrows, trucks, and hand carts; road or railway scrapers, n.o.p.	Nil 43910-1
43910-2	Nomenclature and rates of existing item.	
43910-3	Trailers n.o.p.	0.3 p.c. 43910-1
43910-4	Road maintenance graders, self-propelled	0.2 p.c. 43910-1
44034-3	Sportsmen's fishing lines in retail packages	0.9 p.c. 44034-1

	Guns and rifles of a class or kind not made in Canada; parts thereof:	
44125-1	Other than the following	Nil 44125-1
44125-2	Pump or slide-action shotguns	0.2 p.c. 44125-1

	Apparatus, and parts thereof, for cooking or for heating buildings, not to include commercial food processing machines, namely, continuous pressure and atmospheric pre-heaters and cookers, and parts thereof, for sterilizing or for cooking or for both sterilizing and cooking food products in hermetically sealed containers:	
44300-1	Other than the following	Nil
44300-2	Commercial microwave ovens	0.5 p.c. 44300-1

<u>Tariff Items</u>	<u>Goods Subject to Duty</u>	<u>Rate Adjustment and Applicable 1983 Tariff Item</u>
44300-3	Parts, other than heating elements, of electric stoves or ranges	0.1 p.c. 44300-1
44300-4	Parts of gas stoves or ranges	1.4 p.c. 44300-1
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Apparatus for cooking, designed for house- hold use; parts thereof:		
44300-5	Other than the following	0.1 p.c.* 44300-2
44300-6	Electric coffee makers	3 p.c. 44300-2
44300-7	Parts, other than heating elements, of electric stoves or ranges designed for household use	0.1 p.c. 44300-2
44300-8	Parts, other than heating elements, of electric toasters	0.1 p.c. 44300-2
44300-9	Parts of gas stoves or ranges designed for household use	1.4 p.c. 44300-2
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44300-10	Nomenclature and rates of existing item 44300-3.	
44300-11	Nomenclature and rates of existing item 44300-4.	
44504-1	Electric arc lamps and incandescent electric light lamps, n.o.p.	0.2 p.c.*
44504-2	Fluorescent lamps	1.9 p.c. 44504-1
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<u>Tariff Items</u>	<u>Goods Subject to Duty</u>	<u>Rate Adjustment and Applicable 1983 Tariff Item</u>
	Incandescent lamps, large base, over 31 volts:	
44504-3	Other than the following	1.7 p.c. 44504-1
44504-4	Infra-red	Nil 44504-1
44504-5	Quartz-halogen	2.9 p.c. 44504-1
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	Electric telegraph apparatus and complete parts thereof, other than goods enumerated in tariff item 44546-1:	
44506-1	Other than the following	0.2 p.c. 44506-1
44506-2	Telegraph stock ticker terminals, tele- graph keyboard perforators, teletype terminal equipment and telegraph fac- simile apparatus	Nil 44506-1
44506-3	Complete parts of all the foregoing	Nil 44506-1
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	Electric telephone apparatus and complete parts thereof:	
44508-1	Other than the following	0.3 p.c. 44508-1
44508-2	Telephone hand sets, video telephones and telephone intercommunication systems	Nil 44508-1

<u>Tariff Items</u>	<u>Goods Subject to Duty</u>	<u>Rate Adjustment and Applicable 1983 Tariff Item</u>
44508-3	Complete parts of all the foregoing	0.1 p.c. 44508-1

44512-1	Electric and galvanic batteries, n.o.p., and complete parts thereof, including separator walls of wood, cut to size or not	1 p.c.*
44516-1	Electric motors, and complete parts thereof, n.o.p.	0.1 p.c.*

	Electric apparatus and complete parts there- of, n.o.p.:	
44524-1	Other than the following	0.4 p.c.*
44524-2 to 44524-6	Nomenclature and rates of existing items 44524-2 to 44524-6.	
44524-7	Electrical receptacle boxes and covers, of metal	1.1 p.c. 44524-1
44524-8	Electric junction boxes	2.3 p.c. 44524-1
44524-9	Industrial control-type switches	1.3 p.c. 44524-1
44524-10	Commercial battery chargers	0.4 p.c. 44524-1
44524-11	Burglar alarms	0.7 p.c. 44524-1

<u>Tariff Items</u>	<u>Goods Subject to Duty</u>	<u>Rate Adjustment and Applicable 1983 Tariff Item</u>
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	Radio and television apparatus and parts thereof, n.o.p.:	
44533-1	Other than the following	0.4 p.c.*
	Domestic radio receiving sets, including radio receiving sets for motor vehicles, and parts thereof	
44533-2	Receiver-tuner-amplifier combinations ...	3.6 p.c. 44533-2
44533-3	N.o.p.	Nil 44533-2
44533-4	Nomenclature and rates of existing item 44533-3.	
	Domestic colour television receiving sets and parts thereof	
44533-5	19 inch screen	1.5 p.c. 44533-4
44533-6	N.o.p.	Nil 44533-4
44533-7	Nomenclature and rates of existing item 44533-5.	
44533-8	Domestic receiving antennae, and mountings therefor, for radio or television, not including citizens band radio	1 p.c. 44533-1
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<u>Tariff Items</u>	<u>Goods Subject to Duty</u>	<u>Rate Adjustment and Applicable 1983 Tariff Item</u>
44536-3	Turntables	0.5 p.c. 44536-3
44536-4	Tone arms	Nil 44536-3
44536-5	Nomenclature and rates of existing temporary item 44536-4.	

	Recorders, reproducers and dictation record- ing and transcribing equipment using mag- netizable tape as a recording medium; parts thereof, n.o.p.:	
44538-1	Other than the following	Nil 44538-1
44538-2	Video tape recorders and reproducers other than those used in television broad- casting	0.5 p.c. 44538-1

44540-1	Loudspeakers; audio-frequency electric ampli- fiers; parts thereof, n.o.p.	1 p.c.*

	Electron tubes, except X-ray tubes; Bases, beaded assemblies, cages, guns, mounts, stems and wire-wound grids, all for use in the manufacture of electron tubes, except X-ray tubes:	
44542-1	Other than the following	Nil 44542-1
44542-2	Television picture tubes, colour	0.2 p.c. 44542-1

<u>Tariff Items</u>	<u>Goods Subject to Duty</u>	<u>Rate Adjustment and Applicable 1983 Tariff Item</u>
44603-1	Manufactures, articles or wares, of iron or steel or of which iron or steel or both are the component materials of chief value, n.o.p.	0.1 p.c.*
44612-1	Bottles or cylinders of steel for use as high-pressure containers for gas	0.6 p.c.*

51100-1	Racquets and racquet frames and baseball bats; hollow practice golf balls; balls of all kinds for use in sports, games or athletics, n.o.p.; finished parts of golf clubs	Nil 51100-1
51100-7	Nomenclature and rates of existing item.	

51101-1	Golf balls, n.o.p.	1.3 p.c. 51100-1
51101-2	Golf clubs in sets	1.4 p.c. 51100-1
51101-3	Golf clubs, n.o.p.	1.1 p.c. 51100-1

51110-1	Skis	0.1 p.c.*
51400-1	Caskets and coffins, metal	4.5 p.c. 51400-1
51400-2	Caskets and coffins, n.o.p., and metal parts of caskets and coffins	Nil 51400-1
51805-1	Billiard tables, with or without pockets	2.7 p.c. 51805-1

<u>Tariff Items</u>	<u>Goods Subject to Duty</u>	<u>Rate Adjustment and Applicable 1983 Tariff Item</u>
51806-1	Billiard cues, balls, cue-racks and cue-tips	Nil 51805-1

	House, office, cabinet or store furniture of wood, iron or other material, and parts thereof, not to include forgings, castings, and stampings of metal, in the rough:	
51901-1	Nomenclature and rates of existing item.	
51901-2	Wooden bedroom furniture, not upholstered, not including cribs or bunk beds	0.4 p.c. 51901-1
51901-3	Wooden office furniture, not including desks, visible record equipment, draughting and drawing boards, typewriter stands and tracing or other tables	1.4 p.c. 51901-1
51902-1	In chief part by value of metal	0.1 p.c.*
51902-2	Metal filing cabinets	0.3 p.c. 51902-1

52307-1	Men's ski jackets made from woven fabrics wholly of cotton	7.5 p.c. 52305-1
54125-1	Cordage, exceeding one inch in circumference, n.o.p.	0.1 p.c.*
56301-1	Polyester-cotton percale bedsheets, not fitted	2.5 p.c. 56300-1
56831-1	Disposable gloves made of materials described in headings 93901 to 93906 inclusive	0.5 p.c. 56830-1

<u>Tariff Items</u>	<u>Goods Subject to Duty</u>	<u>Rate Adjustment and Applicable 1983 Tariff Item</u>
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	Carpets, tufted, in rolls, n.o.p.	
57201-1	Other than the following	0.7 p.c. 57200-1
57202-1	Nylon	0.1 p.c. 57200-1
57203-1	Polypropylene, wool or wool blends, acrylic, polyester, rayon or acetate	Nil 57200-1
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59730-1	Phonograph records	3.2 p.c.*
61105-1	Boots, shoes, slippers and insoles of any material, n.o.p.	0.4 p.c.*
61800-1	Rubber cement and all manufactures of rubber and gutta-percha, n.o.p.	0.2 p.c.*
61815-2	Solid, press-on, industrial rubber tires, n.o.p.; off-highway tires, the section width of the tire measuring at least 16 inches including normal sidewalls but not including protective side ribs, bars or decorations, and the diameter of the tire rim measuring at least 24 inches	Nil 61815-2
61815-3	Solid, press-on, industrial rubber tires, not including used or retread tires	1.8 p.c. 61815-2
61815-4	Solid or cushion industrial tires, n.o.p., not including used or retread tires	1.8 p.c. 61815-1

<u>Tariff Items</u>	<u>Goods Subject to Duty</u>	<u>Rate Adjustment and Applicable 1983 Tariff Item</u>

	Pneumatic tires, wholly or in part of rubber, not including used or retread tires:	
61815-5	Industrial, passenger car, bicycle, motorcycle, bus, truck, aircraft, racing car, farm implement, tractor or off-highway tires, other than those enumerated in tariff item 61815-2	0.9 p.c.* 61815-1
61815-6	N.o.p.	2.5 p.c. 61815-1

62410-1	Toys of all kinds, n.o.p.	0.3 p.c.*

	Umbrellas, parasols and sunshades of all kinds and materials:	
62900-1	Garden, beach, patio or lawn types	Nil 62900-1
62900-2	N.o.p.	0.2 p.c. 62900-1

64700-1	Jewellery of any material, for the adornment of the person, n.o.p.	0.2 p.c.*

	Buttons made of materials described in headings 93901 to 93906 inclusive:	
65101-1	Of polyester, acrylic or casein resins	Nil 65100-1

<u>Tariff Items</u>	<u>Goods Subject to Duty</u>	<u>Rate Adjustment and Applicable 1983 Tariff Item</u>
65102-1	N.o.p.	0.1 p.c. 65100-1

65810-1	Magnetic recording tape, n.o.p., manu- factured from synthetic resins or cellulose plastics, unrecorded	0.1 p.c.*

93402	- Organic surface-active agents; surface-active preparations and washing preparations, whether or not containing soap:	
93402-1	Other than the following	0.3 p.c.*
93402-2	Dishwashing detergents, powder or liquid	8.3 p.c. 93402-1
93402-3	Nomenclature and rates and existing temporary item 93402-2.	

93902	- Polymerisation and copolymerisation products (for example, polyethylene, polytetrahaloethylenes, polyisobutylene, polystyrene, polyvinyl chloride, poly- vinyl acetate, polyvinyl chloroacetate and other polyvinyl derivatives, poly- acrylic and polymethacrylic derivatives, coumarone-indene resins):	
	(a) Without admixture other than an agent necessary to prevent caking, including scrap and waste; aqueous emulsions, aqueous dispersions or aqueous solutions, without other admixture:	
93902-1	Nomenclature, rate reduction provisions and rates of existing item.	

<u>Tariff Items</u>	<u>Goods Subject to Duty</u>	<u>Rate Adjustment and Applicable 1983 Tariff Item</u>
93902-2	Nomenclature and rates of existing item.	
93902-3	Low density polyethylene type	0.5 p.c. 93902-3
93902-4	Medium density polyethylene type	Nil 93902-3
93902-5	High density polyethylene type	0.6 p.c. 93902-3
93902-6	Nomenclature and rates of existing item 93902-4.	
93902-7	Nomenclature and rates of existing tem- porary item 93902-6.	
93902-8 to 93902-16	Nomenclature and rates of existing items. Subheading (b), no change. (c) Moulding compositions, n.o.p., in- cluding scrap or waste, whether or not completely formulated; such compositions in the form of not fully cured preforms for compression moulding:	
93902-41	Nomenclature, rate reduction provisions, and rates of existing item.	
93902-42	Polyethylene type Subheadings (d) and (e), no changes. (f) Foamed and expanded, in logs, sheets, blocks, boards, flakes, granules, powder, shreds, scrap or waste:	0.1 p.c.*
93902-75	Nomenclature and rates of existing item.	
93902-76	Polyethylene type	0.4 p.c. 93902-75
93902-77	Nomenclature and rates of existing tem- porary item 93902-76.	

Tariff Items	Goods Subject to Duty	Rate Adjustment and Applicable 1983 Tariff Item
	(g) Plates, sheets, film, sheeting, strip; lay-flat or other tubing, blocks, bars, rods, sticks, non-textile monofilament and other profile shapes imported in lengths, all produced in uniform cross-section:	
93902-81	Nomenclature, rate reduction provisions and rates of existing item.	
93902-82	Polyethylene type, n.o.p.	0.2 p.c.*
93902-83	Medium density polyethylene type sheet, over .01 inch in thickness	1.8 p.c. 93902-82
93902-84 to 93902-87	Nomenclature and rates of existing items and temporary items 93902-83 to 93902-86.	
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	93907 - Articles of materials of the kinds described in heading 93901 to 93906 inclusive, n.o.p.:	
93907-1	Other than the following	0.1 p.c.*
93907-2	Shipping and distribution boxes	0.5 p.c. 93907-1
93907-3	Bottles and ampoules not including vials	0.3 p.c. 93907-1
93907-4	Bottle caps	0.4 p.c. 93907-1
93907-5	Tableware not including tumblers nor disposable goods	0.9 p.c. 93907-1
93907-6 to 93907-13	Nomenclature and rates of existing tem- porary items 93907-2 and 93907-4. to 93907-10.	

In addition, there are two categories of goods identified in Table I as possible candidates for adjustment to which the Board has not applied the above criteria.

First, the data presented in the Background Paper indicated a possible upward adjustment of 1.1 p.c. in the MFN rate of duty applicable to item 43839-1 "Motorcycles having an engine capacity of more than 250 c.c., engines or side cars therefor; parts of the foregoing". In response to this information The Motorcycle & Moped Industry Council (MMIC) and Honda Canada made submissions arguing that this rate adjustment should not be recommended by the Board. The Council noted that goods covered by this item are not now and are not likely to be produced in Canada in the foreseeable future. This evidence was not contested. Evidence at the public hearing also suggested that the rate increase would be totally passed on to the consumer in the form of higher prices. There were no submissions in support of an upward rate adjustment. Since these motorcycles are not produced in Canada at present, and the Board has received no evidence that these goods are likely to be produced in the foreseeable future, any upward rate adjustment at this time would be passed on directly to consumers in the form of higher prices. In light of the weight of evidence and in consideration of the current market situation, the Board is of the opinion that an upward tariff rate adjustment for item 43839-1 is not required in order to maintain protection.

The second category of goods for which the Board considered factors other than the above-mentioned criteria is electronic data processing equipment, peripherals and parts. The Canadian Business Equipment Manufacturers' Association (CBEMA) presented a submission which argued that, in the light of other recent developments, no tariff adjustments compensating for the loss of the fair-market-value system were necessary for these goods. The Association noted that in March, 1977, the Board made its report on Reference No. 150. Computer and Related Telecommunications Equipment which recommended, inter alia, that new tariff items be created for these goods with a rate of duty of Free. This recommendation was supported by CBEMA. At the conclusion of the MTN, two new tariff items, 41417-1 and 41417-2, were created with bound rates of 3.9 p.c. and Free respectively. In as much as the level of protection and its maintenance is no longer at issue, CBEMA argued in respect to this reference that no increase in rate of duty should be, or need be, considered for these goods.

In its Report on Reference No. 150 the Board found that in 1972 90 per cent of Canada's production of electronic processing equipment, peripherals and parts was exported and that a similar proportion of the domestic market was supplied by imports. The Board concluded that in these circumstances tariff protection was of no benefit to either Canadian manufacturers or domestic users. While recognizing that this high technology industry is growing and changing, the Board has no evidence to suggest that the change has been of such a magnitude as to alter the basic premise of its 1977 Report. The Board concludes that a recommendation for an upward rate adjustment would be both contradictory to its earlier findings and not appropriate to present circumstances.

Adjustments in Respect of Country Specific Ministerial Prescriptions

Table II of the Background Paper⁽⁴⁾ presents information regarding imports of wearing apparel and footwear which were the subject of a series of Ministerial prescriptions. These prescriptions were made following fair-market-value investigations where ordinary value for duty rulings could not be issued because the exporters' volumes of sales of like goods in the countries of export did not satisfy the requirements of sections 36 or 37 of the Customs Act. In addition, the large number of producers in each of the exporting countries made individual investigations of all these exporters, and hence the issuance of individual rulings, administratively complicated and difficult. Values for duty for those goods were prescribed as the selling price advanced by a fixed percentage, these advances being determined on the basis of investigations of the major exporters to Canada.

These prescriptions were then applied to all of the subject goods from all of the exporters in the named countries. For example, one prescription states that the value for duty of wearing apparel from Hong Kong shall be the selling price advanced by 33 1/3 per cent. It is known, therefore, that the prescription increased the value for duty of all imports of wearing apparel from Hong Kong by 33 1/3 per cent. These prescriptions had the effect of increasing the effective rates of duties for the named goods from these sources by from 5 p.c. to 9.5 p.c.

The method used to calculate the possible rate adjustment for the goods subject to country specific prescriptions is the same as goods subject to value for duty rulings. The adjustments reflect the impact of the coverage under these items of the imports of goods from countries not named in the prescription. These adjustments are very small because Canada's large imports of wearing apparel and footwear enter under only a few tariff items, and the volume of these goods from the named countries is relatively small when compared to total imports under these items.

The reactions of interested parties to the data set out in Table II revealed the lack of any commonly-agreed way around this difficulty. The initial position of the Canadian Importers Association (CIA) was that the creation of country specific tariff items might possibly provide a more equitable basis for adjustment. However, none of the other participants expressed support for country specific tariff arrangements. Moreover, such arrangements would be contrary to Article I of the GATT, which provides that signatories shall accord each other most-favoured-nation treatment and sanctions tariff preferences only in certain circumstances. The creation of country specific tariff items, initially suggested by the CIA and subsequently developed in the Staff Appreciation of the Evidence, would not impair traditional access to the Canadian market for the subject goods. However, the Board is of the opinion that the creation of country specific tariff items is not acceptable in principle under a MFN Tariff, and notes that the CIA itself

(4) See Appendix "B", pp. 27-31.

withdrew its proposal. Therefore, on the basis of both the public record and principle, the Board sets aside any further consideration of country specific tariff adjustments to compensate for the loss of country specific Ministerial prescriptions.

The Board considered also whether the general criteria applied to identify adjustments in respect of the valuation actions described in Table I would also yield useful solutions for the items included in Table II. First, consideration was given to those instances where over 70 per cent of the total CITC imports were affected by a prescription and for which the possible adjustment was 0.1 p.c. or more. Few new tariff items could be established. In many cases the goods are classified under a n.e.s. CITC category, which makes it virtually impossible to write a new tariff item. However, there were some cases for which a specific new item could be created. For example, a new item might be created by extracting women's woven cotton corduroy jeans from tariff item 52305-1 which is currently worded:

"Clothing, wearing apparel and other articles, made from woven fabrics wholly of cotton; all textile manufactures, wholly or partially manufactured, the component fibre of which is wholly cotton, n.o.p."

The new item would be subject to the existing rate of duty of 22.5 p.c., adjusted upward by 7.5 p.c., to give a post-implementation rate of 30 p.c. In a similar fashion a new tariff item could be created by extracting women's and girls' folding plastic slippers from tariff item 61105-1; which is currently worded:

"Boots, shoes, slippers and insoles of any material, n.o.p."

This new item would be subject to a rate of duty of 22.5 p.c., adjusted upward by 5 p.c., for a post-implementation rate of 27.5 p.c. The Shoe Manufacturers' Association argued that the creation of country specific tariff items would only result in importers changing their source of supply. By analogy, the additional duties payable under these new tariff items could be circumvented by only a minor change in product composition; importers, instead of importing women's cotton jeans, might import women's cotton/synthetic blended jeans. In the Board's opinion, the ease with which this could be done with garments and footwear renders meaningless any such adjustments.

Applying the additive method the tariff items for garments might attract adjustments ranging from 0.1 p.c. to 1.3 p.c. and the rate of duty for the footwear item might be increased by 0.3 p.c. This solution was not supported by the Canadian Apparel Manufacturers' Association, arguing that only quotas afforded meaningful protection. The Shoe Manufacturers' Association stated that an upward adjustment of 0.3 p.c. was meaningless in relation to the magnitude of their problem. Footwear from low-cost sources is also subject to quotas.

As noted, most of the apparel and footwear named in Ministerial prescriptions are currently subject to import quotas. The evidence presented by the majority of interested participants suggests that quotas provide the only meaningful protection against imports from low cost sources. The Board concludes that, in the case of low-cost imports of apparel and footwear, the small rate adjustments derived by the application of its criteria would be ineffective in terms of increasing the protection currently provided by quotas.

Other Prescriptions

Table III of the Background Paper⁽⁵⁾ lists the prescriptions issued under sub-sections 39(a) and (d) of the Customs Act, other than those listed in Table II, which were in effect on April 1, 1979. It will be recalled that all the prescriptions identified in Table II state that the value for duty shall be the selling price of the goods advanced by a specified percentage and that they apply to all named goods from certain countries. The prescriptions listed in Table III are more complicated. Some state that the value for duty shall be the exporter's costs of production or domestic list prices advanced by a certain percentage. Some provide for different percentage advances depending on whether the exporter is the manufacturer of the goods or a distributor/wholesaler. Others state that the value for duty shall be the selling price of similar goods imported from a third country. Still others state the value for duty in specific dollar terms. Many of these prescriptions apply to all the named goods from a certain country; but several apply only to individually named exporters. For these prescriptions, in general, the possible rate adjustment on a tariff item basis is negligible or unknown since no affected entries were found in the sample drawn for the customs entry study.

The evidence presented by the public in respect of these prescriptions provided the Board with little additional information regarding specific cases and little guidance as to how the loss of these prescriptions might be compensated for in the future. The same criteria used to identify tariff adjustments in respect of the goods subject to normal value for duty investigations were applied. This involves, in the first instance, identification of those cases where the prescription affected 70 per cent or more of the imports of the affected goods. This situation, of course, occurs in only a very few instances since most of these prescriptions apply only to one named exporter. In any event, this criterion focuses attention on the following prescriptions.

#240 Wearing apparel (United States). The data suggests that an adjustment might be made for certain wearing apparel entering under tariff items 56940-1, 61800-1 and 93907-1. The prescription stated that the subject goods were to be valued on the basis of the selling price of similar goods by another vendor. The Board could not establish from the evidence available what the other selling prices were in the survey period and is unable, therefore, to calculate what the adjustment might be.

(5) See Appendix "B", pp. 32-38.

#292 Motorcycles (Japan). This company-specific prescription states that the goods are to be valued on the basis of the domestic selling price of another Japanese producer. The Board has no information on such other Japanese selling prices and is, consequently, unable to calculate an adjustment.

#133 Plastic drainage, tubing and accessories (United States). This is a prescription governing the valuation of goods supplied by a single U.S. producer. According to 1978 trade data the United States supplied 79 per cent or more of all Canadian imports of these goods, which enter under tariff items 93901-81, 93902-81, 93903-81 and 93907-1. In addition, since the prescription stated that the value for duty was to be the selling price advanced by 50 per cent, the rate adjustment with respect to the pertinent goods poses no problem. However, this exporter's share of total U.S. exports of these goods to Canada could not be established from the available evidence and the Board is unable, therefore, to calculate what the appropriate adjustment might be.

#174 Professional golf balls and equipment (United States). This company-specific prescription stated that the value for duty was to be the higher of the producer's domestic selling price to professional golfers less 25 per cent, or the selling price to the importer. The Board does not have any information concerning this producer's domestic selling prices and is unable to calculate an adjustment.

Ministerial Prescriptions for Used Goods and Other Special Cases

Table IV of the Background Paper⁽⁶⁾ presents the available data on all the Ministerial prescriptions issued under the authority of sub-section 39(b) of the Customs Act in force on April 1, 1979. These prescriptions apply to particular groups or types of goods which are enumerated in the Act. In many cases they apply to used or obsolete goods, less-than-prime quality goods or to remnants, close-outs, discontinued lines or surplus goods, or to importations of goods described as "job lots". In some cases they apply to the valuation of goods used in a production process or which are to be assembled, packaged or further manufactured in Canada. These Ministerial prescriptions are of particular concern to many of the interested parties.

It has been difficult to determine the actual impact of these prescriptions as it has not been possible to identify and study individual custom entries. It is possible, however, to indicate certain classes of goods which may have been subjected to valuation by these prescriptions. For example, it seems likely that many relevant machinery and equipment imports were used goods. Many of the imports of undervalued textile products and garments probably comprised job lots, remnants, close-outs, etc. Certain pertinent chemical imports were likely to have been of less-than-prime quality. If the Board applies its general criteria to the prescriptions listed in Table IV only rubber-coated fibreglass cloth, prescription #55, appeared as a possible candidate for a compensatory rate adjustment. However, this prescription was no longer applicable in 1979 and, in the Board's opinion, no adjustment is now justified.

(6) See Appendix "B", pp. 39-40.

The Canadian Manufacturers' Association (CMA) presented two proposals for dealing in future with used goods and less-than-prime quality goods which are currently valued by prescriptions issued under authority of section 39(b) of the Customs Act. These proposals received very broad support from other participants at the public hearing. For used goods the CMA suggested the creation of a new used goods tariff item with the rate of duty being the applicable rate for new goods advanced by 25 per cent. For example, if new goods entered at a rate of 15 p.c. then the rate for such used goods would be 15 p.c. advanced by 25 per cent, i.e. by 3.75 p.c., for a total rate of duty of 18.75 p.c.

It has traditionally been argued that in the absence of special measures of protection against used goods many Canadian manufacturing sectors would be eliminated. For example, tariff item 99215-1 of Schedule "C" prohibits the importation of used or second-hand automobiles and motor vehicles of all kinds. Similarly, 99216-1 prohibits the importation of used or second-hand aeroplanes and aircraft, while 99219-1 prohibits the importation of used or second-hand mattresses or mattress materials. Sub-section 39(b)(ii) of the Customs Act provides that all other used goods shall be valued for duty in such manner as the Minister prescribes. Over the years this provision has resulted in the development of the Appraisal of Used Goods Manual(7), which sets out the basic principles for the valuation of used goods for a wide variety of commodities based on schedules of useful lives, current replacement values and rates of depreciation. In the Board's opinion, it would be virtually impossible to develop, on an individual basis, new used-goods tariff items for all the commodities covered by the Manual. In addition, the Manual covers only the most commonly imported used goods.

In Part I of this Reference the Board was asked whether the draft valuation rules were set out in sufficient clarity to enable importers and exporters to estimate, with reasonable accuracy, the value for duty of their goods in advance of importation. In the Board's opinion meeting these criteria would be difficult to achieve through the creation of new tariff items in Schedule "A" of the Customs Tariff. In recognition of the principle of clarity and of the legitimate concern about the importation of numerous classes of used goods, the Board concludes that a new section be inserted in the Customs Tariff providing that any used goods shall be valued on the basis of the transaction price and be dutiable at the applicable rate for the goods when imported new, advanced by 25 per cent.

Accordingly, the Board recommends that, when the Customs Act is amended to implement the GATT Customs Valuation Agreement, the Customs Tariff be amended to provide that any used goods shall be entered under the appropriate tariff item in Schedule "A" and that the rate of duty for such used goods shall be the Schedule "A" rate of duty, advanced by 25 per cent.

(7) Valuation Division, Tariff Programs and Appraisal Branch, Department of National Revenue, Customs and Excise, Canada, Appraisal of Used Goods Manual (D34-40), November 15, 1976.

The CMA also proposed that a similar solution should be adopted for the calculation of the value for duty of less-than-prime quality goods. In this instance, however, the Association suggested that the advance in duty should range from 25 per cent to 100 per cent at the discretion of the Deputy Minister. In the light of the Minister's expressed concern that the liability for duty be known in advance, the Board, likewise, does not support a discretionary sliding scale for advances in rates of duty. In determining what percentage advance in rate of duty might be appropriate for less-than-prime quality goods, the Board notes that used goods, insofar as they are not new goods, are a special class of less-than-prime quality goods. Since there is general agreement that an advance of 25 per cent in the applicable rate of duty is appropriate for used goods, the Board concludes that a similar advance in the applicable rate of duty would be appropriate for less-than-prime quality goods.

Therefore, the Board recommends that, when the Customs Act is amended to implement the GATT Customs Valuation Agreement, the Customs Tariff be amended to provide that any less-than-prime quality goods shall be entered under the appropriate tariff item in Schedule "A" and that the rate of duty for such less-than-prime quality goods shall be the Schedule "A" rate of duty advanced by 25 per cent.

With respect to the administration of the above-proposed sections, visual inspection of used goods by a Customs officer is normally sufficient to determine whether, in fact, goods are new or used. In the case of less-than-prime quality goods this may seldom be the case. In some instances the importer may not even be aware that less-than-prime quality goods are at issue. Therefore, for purposes of the proposed amendments to the Customs Tariff, the Board considers less-than-prime quality goods to be goods for which there are objective and verifiable domestic or international prime quality standards. In order to ensure equity as between importers and to ensure that the correct duty is collected, the Board considers that there should be statutory provision for independent testing to determine whether or not imported goods are of less-than-prime quality. The development of regulations for this purpose will require consultation with all interested parties but, in the Board's opinion, such legislation should address, inter alia, the following issues:

- i) recognized testing authorities (either governmental or private);
- ii) payment for testing by the importer;
- iii) the taking of samples by Customs officials;
- iv) standards to be applied, and order of application where there are several; and
- v) release of the goods to the importer

A variation of the problem posed by less-than-prime quality goods is that engendered by goods which, while perhaps eminently satisfactory in all other respects, do not accord to certain specifications set by the customer who originally ordered the goods. The difficulty with "off-spec" goods is that there is usually no objective manner in which a claim of off-specification can be verified by an independent testing authority. However,

if the "off-spec" claim is legitimate it should be possible for an importer to obtain from the exporter a written statement of verification that the goods are "off-spec".

There is, of course, a problem of compliance with this type of provision which will have to operate in such a way so as to provide a benefit to traders who declare that their goods are less-than-prime quality or "off-spec". In the Board's opinion, compliance will depend largely on customs administration. The operation of the transaction price valuation system will require that Customs officers have access to current information concerning the selling price of imports in order to provide test values of goods similar to any importation between related parties. Obviously the system will have to be designed so that discounted selling prices of less-than-prime quality or "off-spec" goods are not used as test values for similar prime quality goods. Thus, when goods enter at prices substantially below those of similar recent importations and are not declared to be less-than-prime quality or "off-spec" goods the customs administration must consider whether the goods are being sold to Canada at dumped prices. A subsequent decision whether or not to initiate an anti-dumping action will depend on factors other than the issue of dumping. In the Board's opinion, however, the possibility of an anti-dumping action will encourage traders to declare their goods as being less-than-prime quality or off-specification and pay a slightly higher rate of duty in order to avoid this possibility.

CONSIDERATION OF OTHER ISSUES AND IMPORT POLICIES

Customs Administration

There has been a change in the tone of the evidence presented to the Board as between Part I and Part II of this reference regarding Canada's implementation of the transaction value system. Indeed, some parties who actively supported the transaction value system during Part I have been among the most active in arguing against its implementation during Part II. During Part I some parties indicated specific areas of concern but were prepared to give the proposed system tentative or partial support. During Part II these same parties argued against implementation. The Board recognizes that the general concerns about the overall impact of all of the proposed changes to current import legislation represent real attitudes which are strongly held by many members of the Canadian business community. This general uneasiness about how the proposed import system will operate and be administered was recognized by the Board in its Report on Part I and was the basis for two major recommendations.⁽⁸⁾

The Board recommends that in the development of operational guidelines for the administration of customs valuation, the standards, measures and/or criteria proposed to be applied

(8) A Report by the Tariff Board. The GATT Agreement On Customs Valuation, Part I, Proposed Amendments To The Customs Act, pp. 59-61.

in the interpretation of the term "sufficient information" be rigorously defined and published for public comment well in advance of the actual implementation of the new valuation system.

The Board recommends that the draft operational guidelines of National Revenue be made available for public review well in advance of actual implementation of the proposed valuation system so that professional bodies and the public generally may have an opportunity to comment on them.

In response to these recommendations the Department of National Revenue, Customs and Excise published a Statement of Administrative Principles in December, 1981, and Draft Operational Guidelines in May, 1982, and has held discussions about these papers with the business community. Despite these efforts the evidence before the Board suggests that there is still a very high level of uncertainty among the business community as to how the proposed transaction system of customs valuation, operating in conjunction with other aspects of import policy and legislation, will affect their interests. In the Board's opinion, this uncertainty explains, in large part, the desire of many to retain the fair market system of valuation or at least certain aspects of it.

The explanation of this apparent uncertainty concerning the administration of the transaction value system may lie in an analysis of how the fair-market-value system is administered. A fair-market-value investigation may be initiated in one of four ways. First, a domestic producer may submit a complaint about apparently underpriced imported goods. Second, an importer/foreign exporter may request advice concerning the proper fair market value of certain goods. Third, an importer may appeal the valuation of certain imports. Finally, the Department may initiate an in-house review of the valuation of certain goods. Of these four initiation procedures, the only one explicitly provided for in the Customs Act is an investigation in respect of an appeal. The others are governed by the general provision of section 46(4)(d) which states that:

The Deputy Minister may re-determine the tariff classification or re-appraise the value for duty of any goods in any other case where he deems it advisable, within two years of the date of entry of those goods.

Section 46 will not be affected by the proposed amendments to implement the transaction system of valuation. The main advantage of the fair-market-value system lies in the fact that its actual manner of administration is known. Many parties, when looking to the future, remain uncertain as to what action will be possible under the transaction value system and the manner in which many of its provisions will be administered. Therefore, the Board commends and supports the Department of National Revenue's ongoing consultations with the business community regarding the development of new administrative policies and procedures.

The Deterrent Effect

Some of the concern expressed was directly related to the often negligible impact of the valuation actions. This may have been due to the view of some parties that the protective benefits of the fair-market-value system were greater than revealed by the customs documents. Further, public knowledge of valuation actions (with the exception of some Ministerial prescriptions) is restricted because they apply to goods from a single exporter and are treated as commercial confidential data. Therefore, individual domestic producers can only judge the effectiveness of the system when a complaint subsequently results in a price increase in the marketplace for the imported goods. In addition, many participants stated that the fair-market-value system also provides a "deterrent effect" against undervaluation in general and against unfair or predatory pricing practices. They further argued that the methodology adopted did not take into account the impact of this effect and, as a result, that the possible tariff adjustments do not compensate fully for the loss of the fair-market-value system. However, although the Board notes that there are some instances where the fair-market-value system may have caused exporters to increase selling prices to Canada, neither participants nor the Board have been able to measure this effect.

The "deterrent effect" of the fair-market-value system does not lie in the actual application of the legal provisions of the system in specific instances. The degree of deterrence will depend largely on the enforcement of the legislation. Both the fair-market-value and the transaction value systems of customs valuation are embodied in legislation and both are designed to ensure that imported goods are correctly valued for duty purposes. The differences between the two systems lie in the adjustments which can be made to selling prices and in the source of the information about these adjustments. The proposed draft legislation provides that a number of adjustments which may be made to selling prices and for normal enforcement by Customs officials. The Board is satisfied that there will continue to be a "deterrent effect" under the transaction price system of customs valuation. However, as with the fair-market-value system, the deterrent effect will depend on rigorous enforcement of all the provisions of the proposed draft legislation which reflects Canada's rights and obligations as a signatory of the GATT Customs Valuation Agreement.

Unfair and Predatory Pricing Practices

Participants have repeatedly pointed to a range of situations under the general heading of unfair or predatory pricing practices which, although not explicitly mentioned in the Customs Act, the fair-market-value system has been able to respond to through administrative practice. When a pricing problem occurs in respect of imports, a domestic producer can submit a complaint to National Revenue and the response is normally a value-for-duty investigation. The final value-for-duty ruling may not be a total solution to the price problem but the investigation is viewed by the Canadian producer as a deterrent to such pricing practices by the exporter in the future.

This system depends initially on the complaint procedure which, as noted above, will remain under the proposed transaction value system. In many cases participants stated that the complaint procedure under the fair-market-value system had been used as a first line of defence against allegedly dumped goods since customs officials were able to examine exporters' domestic selling prices. This procedure will no longer be available under the transaction value system. The real benefits of the fair-market-value system were first, that the government was able to respond positively to a complaint, and second, the investigation alerted the exporter/importer to the fact that their prices were low compared to those of like goods.

The loss of this procedure explains the general concern about the future responsiveness of Canadian import policy to unfair and predatory pricing practices, particularly the measures proposed in the Special Import Measures Act. The Report on Part I of this Reference contained the following recommendation.

The Board recommends strongly that, prior to the implementation of the proposed valuation system, the government furnish the Department of National Revenue with a clear direction authorizing the Deputy Minister to initiate anti-dumping actions against injurious unfair and predatory pricing practices on the basis of information available to him.⁽⁹⁾

The Government's response to this recommendation is contained in the notes attached to the Minister's letter of December 31, 1981, to the Chairman of the Board. The response states that:

The Anti-dumping Act already requires the Deputy Minister of National Revenue to initiate an anti-dumping investigation if he is of the opinion that there is evidence of dumping and that the dumping is causing or threatens to cause injury to Canadian production.⁽¹⁰⁾

This response indicates that the argumentation in the Report on Part I failed to make clear the intent of the recommendation. It was not the intent of the recommendation to suggest that the Anti-dumping Act needed to be amended to enable the Deputy Minister to commence anti-dumping investigations on his own initiative in the absence of a formal complaint by domestic producers; this authority had always existed. The problem is that this authority has been used only infrequently. The general administrative procedure is that an anti-dumping investigation is initiated only after a formal complaint has been evaluated and the Deputy Minister is satisfied that there is evidence of both dumping and consequent material injury to the production in Canada of like goods. In the context of the present overall import system, this relatively passive action by National Revenue in respect

(9) Tariff Board. Reference No. 159, Part I - Report, p. 65.

(10) See Appendix "A", p. 9.

of dumping has been reasonable since fair-market-value investigations have enabled the government to respond to complaints, collect the proper customs duties, and provide some protection to domestic producers. These benefits will be lost following implementation of the transaction value system unless there is a change in administrative practice. In the Board's opinion a change in administrative practice to a more active role is necessary, justified, and practical.

The operation of the transaction value system will require the retention of recent import values for all goods since such price information will be necessary in order to establish test values when goods are imported by related parties. Therefore, if numerous "dumped" prices are entered in the data base there will be a consequent significant reduction over time in the valuation base for almost all goods.

Section 2(3) of the Customs Act states that:

All the expressions and provisions of this Act, or of any law relating to the customs, shall receive such fair and liberal construction and interpretation as will best ensure the protection of the revenue and the attainment of the purpose for which this Act or such law was made, according to its true intent, meaning and spirit.

This requirement in conjunction with the re-appraisal authority of section 46(4)(d) of the Act, ensures the protection of the revenue under the fair-market-value system of customs valuation. Under the fair-market-value system National Revenue is able to ensure that the customs revenue is protected even if the goods are sold to Canada at dumped or subsidized prices. Under the transaction value system this protection may be reduced considerably since National Revenue will have to depend on information supplied by the importer. In future, the acceptability of selling prices for individual importations can only be confirmed by initiating an anti-dumping investigation. The initiation of such investigations will depend, of course, on satisfactory evidence of dumping and the Deputy Minister's opinion that such dumping is, at least, likely to cause material injury to the production in Canada of like goods or is materially retarding the establishment of the production in Canada of like goods. The Board concludes that National Revenue's clear mandate to protect the revenue will require the Deputy Minister to commence anti-dumping investigation on his own initiative more frequently under the transaction value system than under the fair-market-value system. In the Board's opinion, supported by statements on the public record, this change in administrative practice is of sufficient importance that it should be clearly sanctioned by the government.

Accordingly, the Board again recommends strongly that, prior to the implementation of the proposed valuation system, the government furnish the Department of National Revenue with a clear direction to the Deputy Minister to initiate anti-dumping actions against injurious, unfair and predatory pricing practices on the basis of information available to him.

THE REVENUE EFFECT

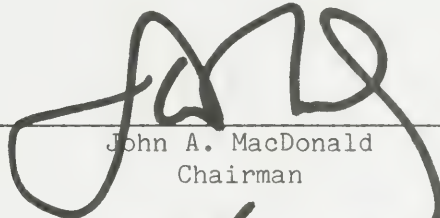
In his letter of reference the Minister requested the Board to ensure that duties collected would not decline significantly if the new valuation system were adopted. In addressing this question the Board has calculated, on the basis of information available from the customs entry study, the revenue generated by the valuation actions. The dollar values generated are, however, approximations and not precise calculations because there is no complete assurance that the sample of entry lines investigated revealed all value for duty investigations which resulted in an increase in the value for duty. Nevertheless, the Board is satisfied that the dollar figures quoted below are an accurate reflection of the order of magnitude of the relative impact of the fair-market-value system.

It has been calculated that the value for duty rulings (Table I) produced additional customs revenues of approximately \$39.9 million in 1978. The value-for-duty rulings in effect in 1978 for electronic data processing equipment, peripherals and parts accounted for approximately \$7.6 million of the total, and thus the conclusion that these 1978 rulings do not require compensatory adjustments reduces to approximately \$32.3 million the revenue impact of the remaining value-for-duty rulings subject to possible adjustment. The Board has calculated that its recommended tariff adjustments would, based on the 1978 trade data, result in additional customs revenue of approximately \$24.4 million. Therefore, those rulings for which no tariff adjustments are recommended involve a once-and-for-ever revenue loss, based on 1978 imports, of approximately \$7.9 million.

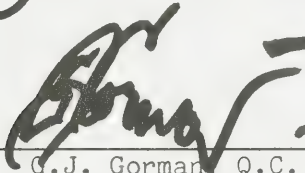
The country specific Ministerial prescriptions (Table II) for which no compensatory tariff adjustments are proposed produced approximately \$6.8 million of customs revenue in 1978. In the case of the other Ministerial prescriptions (Tables III and IV) it has not been possible to calculate the fiscal impact, either because of the absence from the customs entry study of actual import data or because of the nature of the prescriptions.

The total 1978 customs duties collected was \$2,747.2 million. The unadjusted balance from the value-for-duty rulings represents approximately 0.28 per cent of this total and the unadjusted balance from the country specific Ministerial prescriptions represents approximately 0.24 per cent of the 1978 total customs revenues. Therefore, the total cost of replacing the fair-market-value system, at least insofar as can be calculated on the basis of available data, will be approximately one-half of one per cent of total 1978 customs revenues.

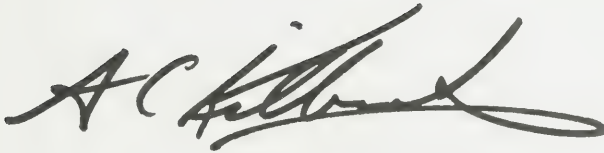
The Board concludes, therefore, that the loss of the fair-market-value system of customs valuation and the adoption of the transaction value system will not likely result in a significant decline in duties collected.



John A. MacDonald
Chairman



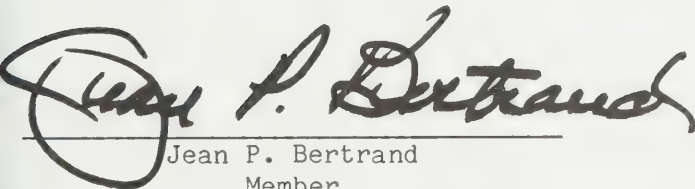
G.J. Gorman, Q.C.
Second Vice-Chairman



A.C. Kilbank
Member



K.C. Martin
Member



Jean P. Bertrand
Member



R.K. Matthie
Member

Ottawa
June 8, 1983

APPENDIX A

THE MINISTER'S LETTER OF RESPONSE
TO THE REPORT ON PART I, AND NOTES

December 21, 1981.

Mr. John A. MacDonald,
Chairman,
The Tariff Board,
365 Laurier Avenue West,
Ottawa, Ontario.
K1A 0G7

Dear Mr. MacDonald:

You will recall that on April 15, 1981, the Board's report on Part I of Reference 159 dealing with Customs Valuation was tabled before Parliament.

You will find attached the Government's response to the recommendations contained in that report and revised draft legislative provisions which incorporate those amendments recommended by the Board and accepted by the Government. The revised draft also incorporates amendments not specifically recommended by the Board, which the Government believes are desirable to clarify the intent of the legislation.

While the Government reserves the right to amend the draft legislation further, the Board should conduct the second part of its inquiry under Reference 159 on the assumption that the attached draft legislation reflects the basic policy decisions of the Government on the issues raised by the Board. Any further changes that may be decided upon between now and the introduction of a Bill to give effect to the draft legislation are likely to be essentially of a "housekeeping" nature and should not affect the substance of the Board's inquiry into possible tariff rate adjustments.

I also wish to inform you that the Department of National Revenue intends very shortly to issue a statement of broad administrative principles, as a first step in responding to the Board's recommendation that National Revenue make draft operational guidelines available for public review well in advance of actual implementation of the proposed valuation system. I am informed that Department intends to issue detailed operational guidelines for public comment on or before July 1, 1982.

Yours sincerely,

Pierre Bussi res.

RESPONSES TO RECOMMENDATIONS IN THE TARIFF BOARD REPORT ON PART I OF
REFERENCE 159 (CUSTOMS VALUATION) - PROPOSED AMENDMENTS TO THE CUSTOMS ACT

Except as noted below, the Government accepts the changes to the draft legislation recommended by the Tariff Board in the above report which was tabled in Parliament on April 15, 1981.

Recommendation 2. The Board recommends that subsection 37(1)(d) and 37(2) be amended to provide that:

- (a) the transaction value applying to the sale of goods between a buyer and seller who are related shall be regarded as unacceptable only where the requirements of subsection 37(2) are not met;
- (b) where the buyer and seller are related, National Revenue officials shall, on their own initiative, examine the conditions surrounding the sale to determine whether or not there is evidence that the relationship influenced the transaction value; and
- (c) where National Revenue officials are not able to satisfy themselves that the relationship did not influence the transaction value, the importer shall be given an opportunity to satisfy any one of the test values.

Response:

Part (a) would not seem to be consistent with the requirements of the GATT Agreement on Customs Valuation (hereafter referred to as the Code) which states that the test values are to be used at the initiative of the importer. To accept Part (a) would require the Customs authorities to apply the test values in all related party transactions where they have grounds for believing that the relationship influenced the price paid or payable regardless of whether the importer requested the application of the tests.

Concerning part (b), it should be noted that the interpretative note to Article 1(2) of the Code states that it is not intended that there be an examination of the circumstances surrounding the sale in all cases where the buyer and the seller are related but only where there are doubts about the acceptability of the price. The right of appeal which the importer has under Canada's Customs legislation should be an adequate safeguard against arbitrary decisions by Customs officials in this area.

As to part (c), the government is satisfied that the proposed legislation already gives the importer an opportunity to satisfy one of the test values and provides

for the acceptance of the price paid or payable in the case of related party transactions when the importer demonstrates that the price paid or payable for the goods meets one of the test values.

In its examination of this recommendation, the government has, however, decided that, in accordance with Article 1(2)(a) of the Code, a new provision should be incorporated into the legislation requiring that the grounds for considering that the relationship has influenced the price be communicated to the importer and that upon the latter's written request such communication be in writing.

Recommendation 3. The Board recommends that a new provision be drafted which would clearly provide in the legislation for consultations between National Revenue and the importer throughout the appraisal process and which would require National Revenue to provide, on request, a written explanation of how the value for duty of any goods had been determined.

Response:

The government proposes to add a new provision which would provide for the importer of any goods, on his written request, to be informed in writing of the manner in which the value for duty of the goods was determined.

As for consultations throughout the appraisal process, the government is of the view that such consultations will occur automatically given the nature of the system and the rights the importers have in the draft legislation, e.g., in relation to test values and the choice regarding the order of application between the deductive and computed value methods. As rightly stated in the Board's report, the system can only work if there is communication between customs administrations and importers. In this connection, except for the computed value method, the value for duty, under the new system, is determined on the basis of information available in the country of importation which can usually be obtained only from the importer.

Recommendation 5. The Board recommends that the proposed legislation be amended by adding a provision along the following lines:

(1) The Governor in Council, on the recommendation of the Minister of National Revenue, may from time to time by regulation prescribe rules for, and explanatory notes to assist in, the interpretation and application of valuation procedures set out in sections 37 to 42.

(2) In the formulation of the rules and explanatory notes to be prescribed by the Governor in Council pursuant to subsection (1), the Governor in Council shall be guided, as nearly as may be, by the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade signed at Geneva, Switzerland, on April 12, 1979, including the Interpretative Notes, as amended from time to time.

Response:

The government does not agree with the statement in the Board's report that there is virtually no incorporation in the draft legislation of the interpretative notes to Articles 1 to 15 of the Code and that only a few are reflected in the draft regulations. The draft legislation and regulations were drafted with the purpose of implementing in Canadian law the provisions of the Code, including the interpretative notes; with the changes now being made to the draft legislation and regulations, the government is satisfied that they will fully implement Canada's obligations under the Code.

With respect to part (1) of this recommendation, the government is of the view that the draft legislation already provides for regulation making authority where appropriate and that there is no need for broad regulation making authority of the kind recommended by the Board.

As to part (2) of the recommendation, the Governor in Council would, as a matter of course, be guided by Canada's obligations under the Code when making regulations pursuant to the draft legislation. Since the legislation itself is closely modelled on the Code, a cross-reference to the Code is not considered necessary.

Recommendation 9.

The Board recommends that, in paragraph 41(2)(b) of the draft legislation, the words "who are not related to the producers from whom they buy the goods at the time the goods are sold to them" be deleted.

Response:

The Government agrees that paragraph 41(2)(b) does not conform to the letter of the Code. However, the relationship, if any, between importer and exporter is an important consideration under all other methods of appraisal. Although not specifically mentioned under the computed value method, it is the Government's view that, from a logical standpoint, relationship should also be a consideration under that method.

Given the current provisions of the Code, the Government is prepared to accept the Board's recommendation. It intends, however, to raise the issue with Canada's trading partners in the appropriate international fora in order to obtain their views. As a result of these discussions, the Government may wish to amend the legislation to deal with problems that may arise in this area.

Recommendation 32. The Board makes a major and fundamental recommendation that all elements of adjustment or calculation should apply equally to all importations under all methods of appraisal.

Response:

The government does not share the Board's view on the degree of uncertainty traders would face under the new system. The government believes that the new system should permit traders to predict with a significant degree of certainty the method of appraisal likely to be used as well as the resulting values. In this connection, the Code, as well as the draft legislation, spells out the elements of adjustment to be made under each method of appraisal.

As to the recommendation itself, the government has difficulty conceptualizing how the elements of adjustment could apply equally under all methods of appraisal given the new international system. Of necessity, the elements of adjustment under the deductive method must differ from those applicable to the computed value method; this is due to the fact that these two methods represent approaches which are fundamentally different. The elements applicable to these two methods could not also be considered to apply equally to the other methods for the same reasons. Moreover, it is not clear how the recommendation relates to the methods that could be used under the residual clause. In fact, the Code does not envisage that all elements of adjustment apply equally under all methods of appraisal.

Recommendation 36. The Board recommends that the proposed legislation be amended to provide that freight, insurance, loading, unloading and handling charges associated with the transportation of goods in the country of export be included in the value for duty under all methods of valuation.

Response:

While the government agrees with the Board that the proposed provisions contain discriminatory elements, it believes that the solution proposed by the Board, while providing in law for a uniform rule, could, in economic terms, result in discrimination between sources of supply which would be much more serious than that which would occur under the legislation as currently drafted. The Board's proposal would discriminate against the U.S.A. to the benefit of other countries. Given the importance of transportation by land of goods between Canada and the U.S.A. the Board's proposal would be tantamount to valuing goods imported from the U.S.A. on a c.i.f. basis. In this connection, the government agrees with the Board when it recommends against a system applied on a c.i.f. basis because of the unknown and radical implications such a basis could have on the structure of tariff rates.

For the reasons stated above and with a view to having a system as neutral as possible, the government proposes to treat freight, insurance and handling charges in the following manner: the only amount of such charges to be included in the value for duty would be that incurred up to the place in the country of export from which the goods are shipped directly to Canada. This is similar to the place element under the current system.

As pointed out in the Board's report, the introduction in the U.S.A. of the new valuation system was accompanied by a change in the customs treatment of freight; inland freight charges are now to be included in the value for duty if paid to or for the benefit of the vendor. Under the previous U.S.A. valuation system, imported goods were essentially valued on an ex-factory basis. As also noted in the Board's report, that change has caused concern to Canadian exporters because of its impact on values for duty of Canadian exports to the U.S.A. Discussions have taken place with the U.S.A. in the course of the last year. The U.S.A. is currently studying the issue to see whether there are grounds to change their current treatment of freight and other related charges. If the U.S.A. were not, as a result of their study, to adopt the same treatment of those charges as proposed above, the government would revert back to the freight provisions in the proposed legislation examined by the Board which are modelled on the current U.S.A. practices.

Recommendation 38. The Board is of the opinion that it would be a comparatively simple task for National Revenue to assemble tabular material for the purpose of allocating freight charges in respect of goods imported into Canada and so recommends.

Response:

Given the decision made on the question of the treatment of freight, the assembling of the tabular material referred to above would not seem necessary.

Recommendation 39. The Board recommends that for the purposes of sections 37 to 42, "import" should be defined as referring to the date on which the importer achieves physical possession of imported goods in Canada. The Board recommends further that, when the revised Customs Act is passed, the definition of "import" in subsection 35(2) of the proposed valuation legislation should state that "import" refers to the date on which imported goods are released from Customs.

Response:

The Board's recommendation has implications that go beyond valuation. In the government's view what is really at issue is what is meant by "time of importation" under section 40 of the proposed legislation (deductive method). Under the other appraisal methods the time element does not specifically have to be considered: the material time is rather the time at which the sale or the production of the goods was completed and this may well predate the time of importation by a considerable margin.

The government proposes to add a definition to section 40 which would stipulate that time of importation means the date of release of the goods for use in Canada.

As noted in the Board's report, section 40(4)(b) of the draft legislation refers to "reasonable costs" instead of "usual costs" as provided for in the Code. The government has also noted the comment that the former expression is somewhat more subjective than the expression in the Code. Although the Board did not recommend any change in this regard, the government proposes to amend section 40(4)(b) to bring it into line with the Code.

Recommendation 44. The Board recommends that a consequential amendment be made to regulation 3 of the Currency Exchange for Customs Valuation Regulations to ensure that the date for valuation purposes and the date of currency conversion remain the same.

Response:

Since the date on which the transaction between importer and exporter was entered into is not, as a general rule, relevant to the determination of the value for duty under the new system, the government is of the view that undue administrative problems would ensue if an attempt were made to implement the Board's recommendation. For those reasons, it is proposed to continue to use the date of direct shipment to Canada as the date for currency conversion.

Recommendation 45. In the case of the deductive method when used to value goods imported for further processing in Canada, the Board recommends that the deductive method of valuation be applied under section 42 (encompassing the residual basis of appraisal), with the 180-day time limitation (or, for that matter, the 90-day time limitation) interpreted "in a flexible manner".

Response:

It should first be noted that the 90 day time limit in section 40 is imposed by the Code and cannot be made more flexible. As to the 180 day limit, the government supports the statement in the Board's report that it is reasonable that both the importer and the Customs administration have some definite goals as to when the goods should be appraised and duties paid. This is particularly relevant if one considers that the deductive method is not the last method of appraisal in the hierarchy. Before moving to section 42 (residual clause) to value the goods, Customs may have to determine whether they can be valued under section 41 (computed value). When the deductive method is used under section 42 it could then be interpreted in a flexible manner. It should be noted that the new U.S.A. customs valuation legislation contains a similar time limit. If, in the administration of the new valuation system that provision appeared to cause real problems, it could certainly be re-examined.

Recommendation 47. The Board recommends strongly that, prior to the implementation of the proposed valuation system, the government furnish the Department of National Revenue with a clear direction authorizing the Deputy Minister to initiate anti-dumping actions against injurious, unfair and predatory pricing practices on the basis of information available to him.

Response:

The Anti-dumping Act already requires the Deputy Minister of National Revenue to initiate an anti-dumping investigation if he is of the opinion that there is evidence of dumping and that the dumping is causing or threatens to cause injury to Canadian production.

Recommendation 48. The Board recommends that the administrative guidelines developed by National Revenue should contain specific rules for the valuation of goods from state-controlled or non-market economies. In addition, the Board strongly supports the maintenance of the ability to use ministerial prescriptions in the proposed Special Import Measures Act.

Response:

The first part of this recommendation cannot be accepted. To accept it would go against the letter and spirit of the Code which states that valuation procedures should be of general application without distinction between sources of supply. In this connection, many of the countries aimed at by that recommendation are members of the GATT and several are signatories to the Customs Valuation agreement. Problems associated with imports from those countries will continue to be dealt with through consultations and the appropriate Canadian import laws.

As to the second part of the recommendation, it will be noted that the ability to use ministerial prescriptions in anti-dumping cases is maintained in the proposed Special Import Measures Act made public in July 1980.

Recommendations
49/50

In the Board's view it should be possible under the proposed system of valuation to establish time limits for the review/re-appraisal process by National Revenue since the necessary information should be more readily available. In the Board's opinion, if it is decided to maintain a two-stage review/reappraisal process within National Revenue, the second stage should be at a totally separate and superior level and the whole process should be completed within twelve months of the importation of the goods.

The Board does not recommend any changes in section 47 of the Customs Act.

Response:

The Board's view are noted and will be taken into account in National Revenue's current review of the appeal procedures for both valuation and tariff classification purposes.

Recommendation 51. The Board recommends that with the introduction of the new valuation system, greater use be made of section 49 of the Customs Act (providing for reference to the Tariff Board from the Deputy Minister of National Revenue) in connection with the interpretation of issues of broad applicability pertaining to customs valuation.

Response:

This recommendation has been noted and will be taken into account by National Revenue in the administration of the new system.

Recommendations Dealing With The
French Text of the Proposed Legislation.

The Board's recommendations in this area have been carefully examined by the Department of Justice. The Government has concluded that the following recommendations should not be accepted since they would require changes that are not in conformity with currently accepted principles of legal drafting. These are:

Recommendations 12 and 16: That "valeur reconstituée" be replaced by "valeur calculée". (Sections 35(2) and 36(2)(d))

Recommendations 13 and 15: That "valeur déductive" be used rather than "valeur de référence". (Sections 35(2) and 36(2)(c))

Recommendation 19: That "et autres enveloppes et contenants" be substituted for "et autres emballages". (Section 37(4)(a)(iii))

Recommendation 20: That "cession" be used instead of "disposition". (Section 37(4)(a)(v))

Recommendation 21: That "établir" be substituted for "prendre". (Section 37(6))

Recommendation 23: That "un montant" be used rather than "des montants". (Section 38(3)(b))

Recommendation 26:

That the French text of section 40(2)(a) be reviewed and revised to bring it into accord with the structure of the English text and with the Code.

Recommendation 28:

That "significative" be used instead of "notable". (Regulation 3(a)(iv))

In examining recommendation 31, that "du groupe le plus étroit de marchandises" be substituted for "de la plus proche catégorie", the government has concluded that both the English and French texts of Regulations 5(b) and 6(2)(b) are somewhat ambiguous since they do not clearly specify that the group or range of imported goods of the same class or kind to be examined must include the goods being valued. These regulations are therefore being amended to rectify this problem. The amended regulations will continue to refer to "de la plus proche catégorie".

APPENDIX B

STATISTICAL TABLES USED DURING THE COURSE OF THE REFERENCE TO IDENTIFY POSSIBLE TARIFF ADJUSTMENTS

Table I - Goods Subject To Value For Duty Rulings
January 1, 1976 To April 1, 1979

Table II - Value For Duty Rulings Enforced By
Ministerial Prescriptions As Of April 1, 1979

Table III - Ministerial Determinations Issued Under
The Authority of Sections 39(a) Or 40 Of The
Customs Act, Or Where The Authority Is Not
Clear, And Which Were In Effect On April 1, 1979

Table IV - Ministerial Determination Issued Under
The Authority Of Section 39(b) Of The Customs
Act And In Effect On April 1, 1979

NOTE: The page numbers in this Appendix are the
same as those in the Background Paper.

EXPLANATORY NOTES CONCERNING THE
FORMAT OF TABLES I AND II

NOTES EXPLICATIVES CONCERNANT LA
DISPOSITION DES TABLEUX I ET II

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
Tariff Item/ Numéro tarifaire	Description of Products/ Description des produits	Country/ Pays	Total Tariff Item Imports/ Total des importations sous le numéro tarifaire	Ruling Impact from Sample/ L'impact de la décision sur l'échantillon	1979 Tariff Rate/ Taux tarifaire 1979	MTN Rate/ Taux NCM	Possible Adjustment/ Rajustement possible	Affected Imports as % of Total Imports of Commodity Class/ Importations affectées exprimées en % du total d'importations de la classe de marchandises

----- %/p.c. -----

- \$'000 -

- (1) See Customs Tariff Schedules for description. Some goods studied may enter under more than one tariff item.
- (2) Description of goods is that most commonly used on Customs documentation and does not necessarily correspond exactly to product descriptions found in either the Customs Tariff or the CITC.
- (3) The country or countries shown are the countries of origin of the goods whose values for duty are increased by either the value-for-duty rulings or the prescriptions.
- (4) Total Tariff Item Imports is the total Canadian dollar value of all goods imported during 1978 for each tariff item. This is not the value of total imports of the 7-digit CITC class under study. The latter figure cannot be published in conjunction with the import value of the tariff item because of the secrecy requirements of the Statistics Act.
- (5) Ruling Impact from Sample shows the advance in the value for duty as a percentage increase over the selling price for goods at the 7-digit CITC level demonstrated by the Board's Customs entry study.
- (6) Rates of duty in effect at the beginning of April 1979.
- (7) Final rates of duty negotiated in the Tokyo Round which will be fully implemented by 1987.
- (8) The Possible Adjustment shows the number of percentage points of duty which would need to be added to the rate of duty applicable at the time the Customs Valuation Code is implemented in order to recover the protection and government revenues which would have been lost had the new system have been introduced at the beginning of April 1979.
- (1) Pour la description, voir les listes du Tarif des douanes. Certains produits étudiés peuvent appartenir à plus d'un numéro tarifaire.
- (2) La description des produits est celle utilisée couramment dans la documentation douanière et ne correspond pas nécessairement de façon précise aux descriptions de produits que l'on retrouve soit dans le Tarif des douanes, soit à la NCI.
- (3) Le ou les pays indiqués sont ceux pour lesquels les valeurs imposables des produits sont augmentées en vertu soit de décisions sur la valeur en douane, soit d'ordonnances.
- (4) Total des importations sous le numéro tarifaire est la valeur totale en dollars canadiens de tous les produits importés au cours de 1978 pour chaque numéro tarifaire. Il ne s'agit pas de la valeur des importations totales en vertu des classes à sept chiffres de la NCI présentement à l'étude. Il est en effet interdit, en vertu de la Loi sur la Statistique de publier ces données en conjonction avec la valeur d'importation par numéro tarifaire.
- (5) L'impact de la décision sur l'échantillon exprime l'avance de la valeur en droit en termes de pourcentage d'augmentation par rapport au prix de vente des produits examinés dans l'enquête de la Commission en vertu de la classification de sept chiffres de la NCI.
- (6) Il s'agit des taux de droit en vigueur au début d'avril 1979.
- (7) Taux de droits définitifs tels que négociés lors du "Tokyo Round" et qui entreront pleinement en vigueur en 1987.
- (8) Le Rajustement possible exprime en pourcentage la surcharge qu'il avait fallu imposer aux taux de droits applicables en vertu du Code d'évaluation en douanes pour compenser les pertes de protection et de revenus gouvernementaux qui auraient été encourus si ce Code avait été introduit au début d'avril 1979.

(9) Affected Imports as % of Total Imports of Commodity Class shows the 7-digit CITC goods which were affected by the ruling as a percentage of the total imports in 1978 of the 7-digit CITC class at issue under all tariff items.

(9) Importations affectées exprimées en pourcentage du total d'importations de la classe de marchandises exprime les marchandises classées en vertu de la classification de sept chiffres de la NCCI qui sont affectées par la décision en pourcentage des importations totales de 1978 des marchandises de la classification à sept chiffres de la NCCI en cause sous tous les numéros tarifaires.

EXPLANATORY NOTES CONCERNING THE
FORMAT OF TABLES III AND IV

NOTES EXPLICATIVES CONCERNANT LA
DISPOSITION DES TABLEAUX III ET IV

(1)	(2)	(3)	(4)	(5)	(6)	(7)
	Description of Goods and Country/ Description des produits et pays		Tariff Item(s) Commonly Applied/ Numéros tarifaires généralement appliqués	Rates of Duty(b) Taux de droit 1978 1987	Value of Imports/ Valeur des importations Total/ Country/ Total Pays	Affected Imports as % of Total/ Importations affectées en % du total
#(a)		Ruling/Décision		- %/p.c. -	- \$'000 -	- %/p.c. -

Notes Re Tables III & IV

- (1) # indicates the number given the Ministerial determinations prescribing the manner in which the named goods are to be valued.
- (2) The description of the goods is taken from the prescription itself and does not necessarily relate to particular tariff items or CITE descriptions. Where a country is named, this is the country against which the prescription applies. If no country is named then the prescription applies to all imports regardless of source.
- (3) An attempt has been made to summarize the prescribed methods of valuation as an indicator of the possible impact of the prescription. Many show the Value for Duty (VFD) = Advance of 25% or 50%, which means that if the goods are exported by the manufacturer of the goods the value for duty is the selling price advanced by 25%, but if the exporter is a wholesaler/distributor then the value for duty is the selling price advanced by 50%.
- (4) The Ministerial prescriptions apply to named goods and not to tariff items. The Board's staff have attempted to identify the tariff item(s) under which the goods named in each prescription may have been imported.
- (5) Rates of Duty are the rates for the tariff items identified by the staff.
- (6) Value of Imports is the total value of all goods imported in 1978 for each tariff item and for each named country. The confidentiality requirements of the Statistics Act and the Customs Act do not permit publication of the import values of the specific goods subject to the prescriptions in conjunction with the import values by tariff item.

Notes concernant les Tableaux III & IV

- (1) # indique le numéro attribué aux déterminations ministérielles prescrivant la méthode d'évaluation qui sera appliquée pour les produits nommés.
- (2) La description des produits est extraite de l'ordonnance même et ne se rapporte pas nécessairement à des numéros tarifaires spécifiques ou aux descriptions de la NCCI. Les pays nommés sont ceux pour lesquels l'ordonnance s'applique. Lorsque aucun nom de pays n'est mentionné, l'ordonnance s'applique à toutes les importations, peu importe l'origine.
- (3) On a tenté de résumer les méthodes d'évaluation prescrites afin d'en mesurer l'impact possible. Plusieurs rapportent une évaluation douanière (ED) = Avance de 25 p.c. ou de 50 p.c., ce qui signifie que si le manufacturier exporte lui-même les produits, leur évaluation douanière sera le prix de vente avancé de 25 p.c., mais que si l'exportateur est un distributeur-grossiste, l'évaluation douanière sera alors celle du prix de vente avancé de 50 p.c.
- (4) Les ordonnances ministérielles s'appliquent aux produits nommés et non aux numéros tarifaires. Le personnel de la Commission a tenté d'identifier par numéro(s) tarifaire(s) les produits nommés dans chaque ordonnance qui peuvent avoir été importés.
- (5) Les taux de droits sont ceux qui correspondent aux numéros tarifaires identifiés par le personnel.
- (6) La valeur des importations est la valeur totale de tous les produits qui ont été importés en 1978 pour chaque numéro tarifaire et pour chaque pays nommé. Les dispositions relatives à la confidentialité contenues dans la Loi sur les statistiques et dans la Loi sur les douanes interdisent la publication des valeurs d'importation de produits spécifiques sujets à des ordonnances conjointement aux valeurs d'importation par numéros tarifaires.

(7) Affected Imports as % of Total simply shows the imports from the named country as a percentage of the total imports as shown in column (6).

(7) Importations affectées en pourcentage du total indique simplement les importations en provenance des pays nommés exprimées en pourcentage du total des importations telles que présentées à la colonne (6).

TABLE I

GOODS SUBJECT TO VALUE FOR DUTY RULINGS
JANUARY 1, 1976 TO APRIL 1, 1979
IMPORT DATA FOR 1978

TABLEAU I

PRODUITS ASSUJETTIS AUX DÉCISIONS DE VALEUR IMPOSABLE
DU 1er JANVIER 1976 AU 1er AVRIL 1979
DONNÉES D'IMPORTATIONS POUR 1978

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
Tariff Item/ Numéro tarifaire	Description of Products/ Description des produits	Country/ Pays	Total Tariff Item Imports/ Total des importations sous le numéro tarifaire	Ruling Impact from Sample/ L'impact de la décision sur l'échantillon	1979 Tariff Rate/ Taux faire 1979	MTN Rate/ Taux NCM	Possible Adjustment/ Rajustement possible	Affected Imports as % of Total Imports of Commodity Class/ Importations affectées exprimées en % du total d'importations de la classe de marchandises
			- \$'000 -				----- %/p.c. -----	
2300-1	Chocolate confectionary/ Confiseries de chocolat	U.K.	49,189	14.1	10	12.5	0.250	54
14100-1	Confectionary/Confiseries	U.K.	48,992	8.6	12.5	15	0.017	94
14100-1	Confectionary/Confiseries	U.K.	48,992	26.2	12.5	15	0.390	39
14100-1	Confectionary/Confiseries	U.K.	48,992	11.3	12.5	15	0.060	77
16001-1	Perfume/Parfum	France	2,898	25.0	20	10	0.130	22
16101-1	Cosmetics/Cosmétiques	U.S.A.	6,513	3.4	15	10	0.010	n.a.
16101-1	Perfume/Parfum	France	6,513	no data	15	10	no data	10
17100-1	Craft books/ Livres d'artisanat	U.S.A.	127,312	0.63	10	Free	0.710	63
17100-1	Books/Livres	U.S.A.	127,312	1.03	10	Free	0.030	85
17100-1	Printed material/Imprimés	U.S.A.	127,312	34.3	10	Free	0.005	n.a.
17100-1	Printed material/Imprimés	U.S.A.	127,312	no data	10	Free	no data	58
17100-1	Books/Livres	U.S.A.	127,312	6.6	10	Free	0.004	4
17100-1	Printed material/Imprimés	U.S.A.	127,312	0.0	10	Free	0.0	89
17100-1	Books/Livres	U.S.A.	127,312	20.5	10	Free	0.660	31
17100-1	Books/Livres	U.S.A.	127,312	0.02	10	Free	n.s.	3
17100-1	Printed material/Imprimés	U.S.A.	127,312	18.8	10	Free	0.090	13

17100-1	Books/Livres	U.S.A.	127,312	no data	10	Free	no data	n.a.
17800-1	Calendars/Calendriers	Switzerland	37,635	2.3	25(a)	20	0.002	9
17800-1	Calendars/Calendriers	U.S.A.	37,635	16.2	25(a)	20	0.100	56
17800-1	Printed matter/Imprimés	U.S.A.	37,635	1.26	25(a)	20	0.001	n.a.
17800-1	Catalogues/Catalogues	U.S.A.	37,635	43.11	25(a)	20	1.320	74
17800-1	Brochures/Brochures	U.S.A.	37,635	8.95	25(a)	20	0.027	44
17800-1	Advertising material/ Imprimés publicitaires	U.S.A.	37,635	45.29	25(a)	20	5.22	73
17800-1	Advertising material/ Imprimés publicitaires	Switzerland	37,635	24.22	25(a)	20	0.034	n.a.
17800-1	Calendars/Calendriers	Switzerland	37,635	no data	25(a)	20	no data	n.a.
17800-1	Printed matter/Imprimés	Switzerland	37,635	63.55	25(a)	20	0.014	n.a.
18010-1	Decals/Décalcomanies	U.S.A.	3,944	16.48	17.5	10.2	2.23	41
	Blueprints/Bleus	France	1,675	no data	17.5	10.2	no data	n.a.
J-1	Blueprints/Bleus	U.S.A.	1,675	17.58	17.5	10.2	0.9	5
18100-1	Printed matter/Imprimés	U.S.A.	31,642	15.14	20	11.3	1.53	33
18100-1	Calendars/Calendriers	Hong Kong	31,642	no data	20	11.3	no data	n.a.
18100-1	Promotional material/ Matériel publicitaire	U.S.A.	31,642	14.94	20	11.3	0.69	3
18105-1	Greeting cards/ Cartes de souhaits	U.S.A.	4,741	8.92	20	11.3	1.32	69
18700-1	Photocopy paper/ Papier pour la photocopie	U.S.A.	21,361	34.43	17.5	10.2	0.31	28
18700-1	Photo material/ Papier pour la photographie	U.S.A.	21,361	0.34	17.5	10.2	0.001	n.a.
18700-1	Paper/Papier	U.S.A.	21,361	0.0	17.5	10.2	0.0	20
18702-1	Photosensitive film/ Pellicules panchromatiques hypersensibles ou super- sensibles	U.S.A.	97,105	10.57	17.5	10.2	0.06	84
19200-1	Gypsum paperboard/ Panneau de gypse	U.S.A.	76,791	1.86	15	9.2	0.011	99

TABLE I (CONT.)

TABLEAU I (SUITE)

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
Tariff Item/ Numéro	Description of Products/ Description des produits	Country/ Pays	Total Tariff Item Imports/ Total des importations sous le numéro tarifaire	Ruling Impact from Sample/ L'impact de la décision sur l'échantillon	1979 Tariff Rate/ Taux faire 1979	MTN Rate/ Taux NCM	Possible Adjustment/ Rajustement possible	Affected Imports as % of Total Imports of Commodity Class/ Importations affectées exprimées en % du total d'importations de la classe de marchandises
			- \$'000 -				%/p.c.	
19200-1	Gypsum paperboard/ Panneau de gypse	U.S.A.	76,791	0.0	15	9.2	0.0	99
19300-1	Paper bags/Sacs en papiers	U.S.A.	4,892	0.50	15	9.2	0.037	76
19700-1	Paper tapes/Ruban de papier	U.S.A.	38,210	0.0	15	9.2	0.0	20
19700-1	Toilet tissue/ Papier hygiénique	U.S.A.	38,210	0.0	15	9.2	0.0	43
19700-1	Paper tapes/Ruban de papier	U.S.A.	38,210	0.07	15	9.2	n.s.	23
19750-1	Printing paper/ Papier d'impression	U.S.A.	87,518	0.38	12.5	8	0.007	73
19750-1	Bond paper/Papier Bond	U.S.A.	87,518	no data	12.5	8	no data	7
19900-1	Paper/Papier	U.S.A.	89,531	9.61	17.5	10.2	0.003	74
19900-1	Paper cups/Tasses de papier	U.S.A.	89,531	0.0	17.5	10.2	0.0	92
19900-1	Paper dividers/ Séparateurs de papier	U.S.A.	89,531	1.26	17.5	10.2	n.s.	54
19900-1	Envelopes/Enveloppes	U.S.A.	89,531	6.84	17.5	10.2	0.020	80
19900-1	Paper masking tape/ Ruban (en papier) cache	U.S.A.	89,531	1.69	17.5	10.2	0.007	45
19900-1	Envelopes/Enveloppes	U.S.A.	89,531	3.90	17.5	10.2	0.018	77
19900-1	Paper/Papier	U.S.A.	89,531	0.74	17.5	10.2	0.012	55
19910-1	Cardboard cartons/ Boîtes de carton	U.S.A.	29,945	3.22	17.5	10.2	0.164	84
19910-1	Boxes-cartons/Boîtes-carton	U.S.A.	29,945	2.5	17.5	10.2	0.065	56
19910-1	Boxes-cartons/Boîtes-carton	U.S.A.	29,945	2.86	17.5	10.2	0.014	74
19910-1	Paper boxes/Boîtes de carton	U.S.A.	29,945	0.41	17.5	10.2	n.s.	7

19910-1	Fibre container/ Récipients de fibre	U.S.A.	29,945	0.92	17.5	10.2	0.009	66
19910-1	Paper boxes/Boîtes de carton	U.S.A.	29,945	1.01	17.5	10.2	0.029	84
19910-1	Cartons/Récipients de carton	U.S.A.	29,945	0.0	17.5	10.2	0.0	19
19910-1	Cartons/Récipients de carton	U.S.A.	29,945	2.91	17.5	10.2	0.012	54
19911-1	Fibre board boxes/ Boîtes de carton-fibre	U.S.A.	9,682	0.09	15.0	9.2	0.001	9
19911-1	Fibre container/ Récipients de fibre	U.S.A.	9,682	0.14	15	9.2	0.001	19
19911-1	Cardboard cartons/ Boîtes de carton	U.S.A.	9,682	no data	15	9.2	no data	7
19911-1	Cartons/Boîtes de carton	U.S.A.	9,682	no data	15	9.2	no data	26
19911-1	Paper boxes/Boîtes de carton	U.S.A.	9,682	no data	15	9.2	no data	27
19911-1	Cartons/Boîtes de carton	U.S.A.	9,682	no data	15	9.2	no data	28
22001-1	Pharmaceutical products/ Produits pharmaceutiques	U.S.A.	88,422	26.66	10	9.2	0.36	50
22001-1	Pharmaceutical products/ Produits pharmaceutiques	U.S.A.	88,422	4.35	10	9.2	0.009	8
23400-1	Cosmetics/Cosmétiques	U.K.	39,563	3.21	15	11.3	0.001	3
23400-1	Cosmetics/Cosmétiques	U.S.A.	39,563	18.21	15	11.3	0.86	60
23400-1	Cosmetics/Cosmétiques	U.K.	39,563	no data	15	11.3	no data	2
23400-1	Cosmetics/Cosmétiques	U.S.A.	39,563	0.0	15	11.3	0.0	81
23400-1	Cosmetics/Cosmétiques	U.S.A.	39,563	33.00	15	11.3	0.29	69
25200-1	Shoe polish/ Cirage pour chaussures	U.S.A.	5,471	0.70	17.5	10.2	0.016	50
27200-1	White mineral oil/ Huile minérale blanche	U.S.A.	3,098	0.0	20	11.3	0.0	64
28900-1	Toilet bowl/ Cuvette de cabinets d'aisances	U.S.A.	9,174	7.94	15	11.3	0.140	65
28900-1	Toilet tanks/ Réservoir de cabinets d'aisances	U.S.A.	9,174	0.0	15	11.3	0.0	80

TABLE I (CONT.)

TABLEAU I (SUITE)

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
Tariff Item/ Numéro tarifaire	Description of Products/ Description des produits	Country/ Pays	Total Tariff Item Imports/ Total des importations sous le numéro tarifaire	Ruling Impact from Sample/ L'impact de la décision sur l'échantillon	1979 Tariff Rate/ Taux tarifaire 1979	MTN Rate/ Taux NCM	Possible Adjustment/ Rajustement possible	Affected Imports as % of Total Imports of Commodity Class/ Importations affectées exprimées en % du total d'importations de la classe de marchandises
			- \$'000 -				%/p.c.	
28900-1	Toilet seat & lid sets/ Siège et couvercle de cabinets d'aisances	U.S.A.	9,174	0.0	15	11.3	0.0	81
28900-1	Toilet seat & lid sets/ Siège et couvercle de cabinets d'aisances	U.S.A.	9,174	0.0	15	11.3	0.0	81
28900-1	Toilet seat/ Siège de cabinets d'aisances	U.S.A.	9,174	0.0	15	11.3	0.0	76
28900-1	Toilet seat lids/ Couvercles pour sièges de cabinets d'aisances	U.S.A.	9,174	0.0	15	11.3	0.0	100
28900-1	Toilet seats/ Sièges de cabinets d'aisances	U.S.A.	9,174	0.0	15	11.3	0.0	82
28900-1	Sinks/Eviers	U.S.A.	9,174	0.37	15	11.3	0.001	28
28900-1	Bath tub/Baignoire	U.S.A.	9,174	0.0	15	11.3	0.0	70
31200-1	Cement asbestos/ Amiante-ciment	U.S.A.	7,094	0.02	12.5	8	0.001	88
32603-1	Glassware/ Verrerie	Italy	50,256	0.0	15	11.3	0.0	2
32603-1	Glass bottles/ Bouteilles de verre	W. Germany	50,256	84.37	15	11.3	0.025	2
32603-1	Glass bottles/ Bouteilles de verre	U.S.A.	50,256	4.02	15	11.3	0.052	72
32615-1	Tempered glass/Verre trempé	U.S.A.	18,661	0.0	17.5	10.2	0.0	75
32648-1	Bottles/Bouteilles	W. Germany	14,096	no data	15	Free	no data	1
32700-1	Sunglasses/ Lunettes de soleil	U.S.A.	17,193	8.34	17.5	10.2	0.39	42

34600-1	Insulated bushings/ Bagues isolées	U.S.A.	8,905	0.0	17.5	10.2	0.0	4
34600-1	Electric boxes, outlets/ Boîtes électriques, prises	U.S.A.	8,905	no data	17.5	10.2	no data	n.a.
35200-1	Fireplace sets/ Accessoires de cheminée	U.S.A.	86,427	0.0	17.5	10.2	0.0	30
35200-1	Key blanks/Matrices de clé	U.S.A.	86,427	16.83	17.5	10.2	0.115	44
35200-1	Tub fillers/ Robinets de baignoires	U.S.A.	86,427	0.0	17.5	10.2	0.0	18
35200-1	Fittings, bath & shower/ Accessoires de baignoires et de douches	U.S.A.	86,427	0.0	17.5	10.2	0.0	8
35200-1	Sprinkler equipment/ Dispositifs d'arrosage	U.S.A.	86,427	0.0	17.5	10.2	0.0	8
35200-1	Gongs, electric/ Gongs électriques	U.S.A.	86,427	0.0	17.5	10.2	0.0	92
35200-1	Alarm systems/ Systèmes d'alarme	U.S.A.	86,427	0.0	17.5	10.2	0.0	69
35200-1	Soil pipe & fittings/ Raccords de tuyauterie de cuivre	U.S.A.	86,427	0.0	17.5	10.2	0.0	74
35303-1	Aluminum hot mill stock/ Profils d'aluminium laminés à chaud	U.S.A.	5,119	0.0	12.5	8	0.0	57
35400-1	Aluminum can ends/ Extrémités de boîtes en aluminium	U.S.A.	107,261	0.0	17.5	10.2	0.0	33
35400-1	Gym equipment/ Equipement de gymnase	U.S.A.	107,261	0.0	17.5	10.2	0.0	4
35400-1	Frames/Cadres	U.S.A.	107,261	0.0	17.5	10.2	0.0	12
35400-1	Aluminum products/ Produits d'aluminium	U.S.A.	107,261	4.80	17.5	10.2	0.001	64
35400-1	Key blanks/Matrices de clé	U.S.A.	107,261	0.0	17.5	10.2	0.0	2
35400-1	Sprinkler equipment/ Dispositif d'arrosage	U.S.A.	107,261	0.0	17.5	10.2	0.0	1
35400-1	Aluminum awnings/ Marquises en aluminium	U.S.A.	107,261	0.26	17.5	10.2	0.001	82

TABLE I (CONT.)

TABLEAU I (SUITE)

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
Tariff Item/ Numéro tarifaire	Description of Products/ Description des produits	Country/ Pays	Total Tariff Item Imports/ Total des importations sous le numéro tarifaire	Ruling Impact from Sample/ L'impact de la décision sur l'échantillon	1979 Tariff Rate/ Taux tari- faire 1979	MTN Rate/ Taux NCM	Possible Adjustment/ Rajustement possible	Affected Imports as % of Total Imports of Commodity Class/ Importations affectées exprimées en % du total d'importations de la classe de marchandises
			- \$'000 -					
35400-1	Window moulding & glazing beads/ Garnitures pour fenêtres	U.S.A.	107,261	0.36	17.5	10.2	0.001	72
35400-1	Aluminum products/ Produits d'aluminium	U.S.A.	107,261	3.88	17.5	10.2	0.126	74
36215-1	Key blanks/Matrices de clé	U.S.A.	73,314	no data	17.5	10.2	no data	14
36215-1	Plumbers brass goods/ Produits de plomberie en laiton	U.S.A.	73,314	6.02	17.5	10.2	0.019	28
36215-1	Bathroom accessories/ Accessoires de chambre de bain	U.S.A.	73,314	2.83	17.5	10.2	0.011	29
36215-1	Fittings, bath & shower/ Raccords, baignoire et douche	U.S.A.	73,314	0.0	17.5	10.2	0.0	55
36215-1	Tub fillers, showers Robinets de baignoires et de douches	U.S.A.	73,314	no data	17.5	10.2	no data	7
36215-1	Sprinkler equipment/ Dispositif d'arrosage	U.S.A.	73,314	no data	17.5	10.2	no data	2
36215-1	Kits/Nécessaires	U.S.A.	73,314	0.0	17.5	10.2	0.0	n.a.
36800-1	Clocks/Horloges	U.S.A.	17,523	0.0	25	22.5	0.0	87
40000-1	Fittings/Accessoires	U.S.A.	72,656	no data	17.5	12.2	no data	6
40000-1	Couplings and fittings/ Raccords et accessoires	U.S.A.	72,656	1.13	17.5	12.2	0.045	56
40000-1	Couplings and fittings/ Raccords et accessoires	U.S.A.	72,656	0.46	17.5	12.2	0.001	40

40000-1	Couplings and fittings/ Raccords et accessoires	U.S.A.	72,656	0.44	17.5	12.2	0.004	50
40000-1	Couplings and fittings/ Raccords et accessoires	U.S.A.	72,656	0.0	17.5	12.2	0.0	1
40000-1	Couplings and fittings/ Raccords et accessoires	U.S.A.	72,656	no data	17.5	12.2	no data	2
40000-1	Couplings and fittings/ Raccords et accessoires	U.S.A.	72,656	1.45	17.5	12.2	0.009	50
40000-1	Couplings and fittings/ Raccords et accessoires	U.S.A.	72,656	0.0	17.5	12.2	0.0	65
40000-1	Couplings and fittings/ Raccords et accessoires	U.S.A.	72,656	0.0	17.5	12.2	0.0	92
40000-1	Couplings and fittings/ Raccords et accessoires	U.S.A.	72,656	0.0	17.5	12.2	0.0	24
40000-1	Couplings and fittings/ Raccords et accessoires	U.S.A.	72,656	0.0	17.5	12.2	0.0	74
40000-1	Couplings and fittings/ Raccords et accessoires	U.S.A.	72,656	0.15	17.5	12.2	0.002	59
40000-1	Couplings and fittings/ Raccords et accessoires	U.S.A.	72,656	0.0	17.5	12.2	0.0	51
40000-1	Couplings and fittings/ Raccords et accessoires	U.S.A.	72,656	0.0	17.5	12.2	0.0	71
40005-1	Couplings and fittings/ Raccords et accessoires	U.S.A.	7,851	0.0	10	6.8	0.0	89
40005-1	Couplings and fittings/ Raccords et accessoires	U.S.A.	7,851	0.0	10	6.8	0.0	46
40005-1	Couplings and fittings/ Raccords et accessoires	U.S.A.	7,851	1.83	10	6.8	0.036	52
41100-1	Chainsaws/ Scies à dents articulés	U.S.A.	90,659	4.44	12.5	8	0.069	41
41210-1	Offset presses/ Presses offset	U.S.A.	4,448	no data	10	6.8	no data	2
41230-1	Printing plates/ Plaques d'imprimerie	U.S.A.	11,909	20.60	15	9.2	1.479	59
41400-1	Typewriter/Machine à écrire	U.S.A.	32,086	no data	15	Free	no data	60
41400-1	Typewriter/Machine à écrire	U.S.A.	32,086	18.36	15	Free	0.475	46

TABLE I (CONT.)

TABLEAU I (SUITE)

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
Tariff Item/ Numéro tarifaire	Description of Products/ Description des produits	Country/ Pays	Total Tariff Item Imports/ Total des importations sous le numéro tarifaire	Ruling Impact from Sample/ L'impact de la décision sur l'échantillon	1979 Tariff Rate/ Taux faire 1979	MTN Rate/ Taux NCM	Possible Adjustment/ Rajustement possible	Affected Imports as % of Total Imports of Commodity Class/ Importations affectées exprimées en % du total d'importations de la classe de marchandises
			- \$'000 -					
41415-1	Calculating machine/ Machine à calculer	U.S.A.	363,555	0.0	10	Free	0.0	1
41415-1	Calculating machine/ Machine à calculer	U.S.A.	363,555	0.86	10	Free	0.005	39
41415-1	Digital computer/ Calculateur numérique	U.S.A.	363,555	29.27	10	Free	0.977	69
41415-1	Magnetic tape drive/ Dérouleur de bande magnétique	U.S.A.	363,555	0.69	10	Free	n.s.	3
41415-1	Magnetic tape drive/ Dérouleur de bande magnétique	U.S.A.	363,555	0.0	10	Free	0.0	27
41415-1	Electronic computer equipment/ Matériel pour calculateur électronique	U.S.A.	363,555	8.41	10	Free	0.055	82
41415-1	Computer data storage equipment/ Matériel d'emmagasinage des données informatiques	U.S.A.	363,555	8.91	10	Free	0.002	8
41415-1	Computer data storage equipment/ Matériel d'emmagasinage des données informatiques	U.S.A.	363,555	5.58	10	Free	0.003	49
41415-1	Calculating machine/ Machine à calculer	U.S.A.	363,555	8.70	10	Free	n.s.	1
41415-1	Communications computer/ Ordinateur de transmission	U.S.A.	363,555	13.29	10	Free	0.026	42
41415-1	Computer equipment/ Matériel informatique	U.S.A.	363,555	0.16	10	Free	n.s.	34

41415-1	Communications computer/ Ordinateur de transmission	U.S.A.	363,555	0.0	10	Free	0.0	27
41415-1	Computer parts for program controller/ Pièces d'ordinateur pour contrôleur de programme	U.S.A.	363,555	0.69	10	Free	n.s.	6
41415-1	Calculating machine/ Machine à calculer	U.S.A.	363,555	2.37	10	Free	n.s.	35
41415-1	Reader card, computer input/ Lecteur, carte entrée pour ordinateur	U.S.A.	363,555	6.56	10	Free	n.s.	1
41415-1	Consoles, computer/ Pupitres de commande	U.S.A.	363,555	17.65	10	Free	0.013	57
41415-1	Calculating machine/ Machine à calculer	U.S.A.	363,555	2.70	10	Free	0.001	51
41415-1	Calculating machine/ Machine à calculer	U.S.A.	363,555	0.0	10	Free	0.0	9
41415-1	Calculating machine/ Machine à calculer	U.S.A.	363,555	0.17	10	Free	n.s.	3
41415-1	Calculating machine/ Machine à calculer	U.S.A.	363,555	367.99	10	Free	0.002	12
41415-1	Disk drive controllers/ Contrôleurs d'unités de disques	U.S.A.	363,555	0.0	10	Free	0.0	9
41415-1	Central processing unit/ Unité centrale de traitement	U.S.A.	363,555	36.87	10	Free	0.001	5
41415-1	Central processing unit/ Unité centrale de traitement	U.S.A.	363,555	3.65	10	Free	0.007	82
41415-1	Central processing unit/ Unité centrale de traitement	U.S.A.	363,555	8.99	10	Free	0.002	56
41415-1	Central control unit printers/ Imprimantes d'unités centrales de commande	U.S.A.	363,555	9.15	10	Free	n.s.	1
41415-1	Terminal/Terminal	U.S.A.	363,555	2.16	10	Free	n.s.	2
41415-1	Computing system/ Système de calcul	U.S.A.	363,555	14.64	10	Free	0.016	9

TABLE I (CONT.)

TABLEAU I (SUITE)

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
Tariff Item/ Numéro tarifaire	Description of Products/ Description des produits	Country/ Pays	Total Tariff Item Imports/ Total des importations sous le numéro tarifaire	Ruling Impact from Sample/ L'impact de la décision sur l'échantillon	1979 Tariff Rate/ Taux tari- faire 1979	MTN Rate/ Taux NCM	Possible Adjustment/ Rajustement possible	Affected Imports as % of Total Imports of Commodity Class/ Importations affectées exprimées en % du total d'importations de la classe de marchandises
			- \$'000 -				%/p.o.	
41415-1	Computer equipment/ Matériel informatique	U.S.A.	363,555	0.0	10	Free	0.0	35
41415-1	Electric apparatus/ Appareils électriques	U.S.A.	363,555	no data	10	Free	no data	3
41415-1	Terminal/Terminal	U.S.A.	363,555	no data	10	Free	no data	2
41415-1	Computer parts/ Pièces d'ordinateurs	U.S.A.	363,555	2.54	10	Free	n.s.	1
41415-1	Disk drives, magnetic/ Unités de disques magnétiques	U.S.A.	363,555	2.36	10	Free	0.002	3
41415-1	Micro computers, digital/ Micro-ordinateur numérique	U.S.A.	363,555	11.20	10	Free	0.003	50
41415-1	Computer machinery printers/ Imprimantes pour matériel de traitement de l'in- formation	U.S.A.	363,555	2.71	10	Free	n.s.	1
41415-1	Computer parts/ Pièces d'ordinateur	U.S.A.	363,555	6.59	10	Free	0.098	29
41415-1	Terminal/Terminal	U.S.A.	363,555	1.86	10	Free	n.s.	50
41415-1	Electric apparatus & parts/ Appareils électriques et leurs pièces	U.S.A.	363,555	2.08	10	Free	0.001	4
41415-1	Bookkeeping machines & parts/ Machines comptables et pièces	U.S.A.	363,555	6.43	10	Free	0.005	22
41415-1	Computer equip./ Matériel informatique	U.S.A.	363,555	1.07	10	Free	n.s.	9

41415-1	Bookkeeping machine/ Machine comptable	U.S.A.	363,555	5.34	10	Free	0.018	30
41500-1	Vacuum cleaner/Aspirateur	U.S.A.	60,452	0.43	15	12.5	0.007	89
41500-1	Vacuum cleaner/Aspirateur	U.S.A.	60,452	1.21	15	12.5	0.004	68
41500-1	Cleaning equipment/ Equipement de nettoyage	U.S.A.	60,452	0.16	15	12.5	n.s.	91
41500-1	Vacuum cleaner/Aspirateur	U.S.A.	60,452	0.0	15	12.5	0.0	78
41505-1	Ice cream refrigerator cabinets/ Comptoirs frigorifiques pour crème glacée	U.S.A.	20,747	no data	20	12.5	no data	64
41505-1	Refrigerator and freezer/ Réfrigérateur et congélateur	U.S.A.	20,747	0.0	20	12.5	0.0	2
41505-1	Refrigerator/Réfrigérateur	U.S.A.	20,747	1.11	20	12.5	0.061	98
41507-1	Air conditioning and refrigerator equipment/ Appareil de climatisation et de refroidissement	U.S.A.	5,802	0.0	20	12.5	0.0	7
41515-1	Washing machine/Lessiveuse	U.S.A.	41,897	0.58	20	12.5	0.058	92
41515-1	Dryer & washer/ Sécheuse et laveuse	U.S.A.	41,897	no data	20	12.5	no data	96
41540-1	Dryer/Sécheuse	U.S.A.	11,312	0.02	20	12.5	0.001	81
42505-1	Lawn mower/ Tondeuse de gazon	U.S.A.	9,311	0.06	15	10.2	0.002	53
42700-1	Food products machinery/ Machines de préparation de denrées alimentaires	U.S.A.	2,911,266	0.70	15	9.2	n.s.	67
42700-1	Automotive alignment equip./ Nécessaire d'alignement pour automobile	U.S.A.	2,911,266	0.0	15	9.2	0.0	60
42700-1	Furnace equip./ Eléments de chaudière	U.S.A.	2,911,266	0.0	15	9.2	0.0	81
42700-1	Air compressor & parts/ Compresseur d'air et pièces	U.S.A.	2,911,266	9.68	15	9.2	n.s.	50
42700-1	Compressor/Compresseur	U.S.A.	2,911,266	8.83	15	9.2	0.003	43

TABLE I (CONT.)

TABLEAU I (SUITE)

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
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			- \$'000 -					
42700-1	Power transmissions/ Transmissions mécaniques	U.S.A.	2,911,266	7.95	15	9.2	0.002	51
42700-1	Misc. parts/Pièces diverses	U.S.A.	2,911,266	0.0	15	9.2	0.0	2
42700-1	Dies/Matrices	U.S.A.	2,911,266	0.0	15	9.2	0.0	1
42700-1	Sprinkler heads/Disperseurs	U.S.A.	2,911,266	no data	15	9.2	no data	100
42700-1	Construction equipment/ Matériel de construction	U.S.A.	2,911,266	10.43	15	9.2	0.003	69
42700-1	Machines n.o.p./ Machines, n.d.	U.S.A.	2,911,266	0.0	15	9.2	0.0	91
42700-1	Fork lift truck/ Chariot élévateur à fourche	U.S.A.	2,911,266	0.0	15	9.2	0.0	79
42700-1	Compressor parts & accessories/ Pièces et accessoires de compresseur	U.S.A.	2,911,266	0.10	15	9.2	n.s.	76
42700-1	Pumps/Pompes	U.S.A.	2,911,266	0.0	15	9.2	0.0	71
42700-1	Air compressor parts/ Pièces de compresseur d'air	U.S.A.	2,911,266	21.16	15	9.2	0.011	69
42700-1	Dust collection equipment/ Collecteur de poussière	U.S.A.	2,911,266	0.04	15	9.2	n.s.	80
42700-1	Strapping machines & parts/ Machines à cercler et pièces	Japan	2,911,266	1.12	15	9.2	n.s.	61
42700-1	Conveyor equipment & parts/ Convoyeurs et pièces	U.S.A.	2,911,266	1.39	15	9.2	0.001	58
42700-1	Rough terrain crane & parts/ Grue pour terrain accidenté et pièces	U.S.A.	2,911,266	0.0	15	9.2	0.0	91

42700-1	Rough terrain crane/ Grue pour terrain accidenté	U.S.A.	2,911,266	0.0	15	9.2	0.0	76
42700-1	Cranes/Grues	U.S.A.	2,911,266	0.0	15	9.2	0.0	73
42700-1	Industrial winch/ Treuil industriel	U.S.A.	2,911,266	0.69	15	9.2	n.s.	59
42700-1	Winches/Treuels	U.S.A.	2,911,266	0.0	15	9.2	0.0	71
42700-1	Industrial winches & parts/ Treuels industriels et pièces	U.S.A.	2,911,266	0.0	15	9.2	0.0	65
42700-1	Refrigeration units/ Appareils frigorifiques	U.S.A.	2,911,266	0.15	15	9.2	n.s.	48
42700-1	Refrigeration units/ Appareils frigorifiques	U.S.A.	2,911,266	0.0	15	9.2	0.0	90
42700-1	Cleaners/ Appareils à nettoyer	U.S.A.	2,911,266	0.0	15	9.2	0.0	64
42700-1	Refrigeration unit/ Appareil frigorifique	U.S.A.	2,911,266	0.0	15	9.2	0.0	40
42700-1	Ice cream cabinets/ Comptoirs pour crème glacée	U.S.A.	2,911,266	0.0	15	9.2	0.0	95
42700-1	Beverage dispensers/ Distributeurs de boissons fraiches	U.S.A.	2,911,266	0.0	15	9.2	0.0	84
42700-1	Air conditioners/ Climatiseurs d'air	U.S.A.	2,911,266	8.94	15	9.2	0.011	89
42700-1	Air conditioners/ Climatiseurs d'air	U.S.A.	2,911,266	3.3	15	9.2	0.003	92
42700-1	Garbage disposal parts/ Pièces pour destruction des ordures	U.S.A.	2,911,266	1.32	15	9.2	n.s.	82
42700-1	Dishwashers/Lave-vaisselles	U.S.A.	2,911,266	12.65	15	9.2	0.013	100
42700-1	Speed blender/ Mélangeurs à vitesses	U.S.A.	2,911,266	4.98	15	9.2	n.s.	89
42700-1	Electrical food mixers/ Malaxeurs pour aliments	U.S.A.	2,911,266	0.0	15	9.2	0.0	64
42700-1	Electric fans/ Ventilateurs électriques	U.S.A.	2,911,266	0.0	15	9.2	0.0	60

TABLE I (CONT.)

TABLEAU I (SUITE)

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
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			- \$'000 -					
42700-1	Household appliances/ Appareils ménagers	U.S.A.	2,911,266	10.92	15	9.2	0.001	22
42700-1	Dishwasher & refrigerator parts/ Pièces pour lave-vaisselles et réfrigérateur	U.S.A.	2,911,266	0.10	15	9.2	n.s.	93
42700-1	Commercial dishwashing machines/ Lave-vaisselles commerciaux	U.S.A.	2,911,266	0.04	15	9.2	n.s.	98
42700-1	Gasoline pumps/ Pompes à essence	U.S.A.	2,911,266	0.0	15	9.2	0.0	67
42700-1	Snack merchandisers/ Distributeur de friandises	U.S.A.	2,911,266	3.56	15	9.2	0.001	95
42700-1	Vending machine parts/ Pièces de distributeur	U.S.A.	2,911,266	0.09	15	9.2	n.s.	78
42700-1	Snack merchandiser/ Distributeur de friandise	U.S.A.	2,911,266	5.14	15	9.2	n.s.	100
42700-1	Pool material/ Matériel pour piscines	U.S.A.	2,911,266	0.0	15	9.2	0.0	72
42700-1	Gas pumps & parts/ Pompes à essence et leurs pièces	U.S.A.	2,911,266	0.0	15	9.2	0.0	58
42700-1	Automotive alignment equipment/ Equipement pour l'entretien des véhicules	U.S.A.	2,911,266	5.10	15	9.2	0.001	39
42700-1	Hand held tools/ Outils à main	U.S.A.	2,911,266	0.68	15	9.2	0.001	39
42700-1	Hand held tools/ Outils à main	U.S.A.	2,911,266	3.0	15	9.2	n.s.	49

42700-1	Machinery & access./ Machines et accessoires	U.S.A.	2,911,266	0.0	15	9.2	0.0	93
42700-1	Snow removal equip./ Matériel de déneigement	U.S.A.	2,911,266	1.44	15	9.2	n.s.	33
42700-1	Garden instruments/ Instruments de jardinage	U.S.A.	2,911,266	no data	15	9.2	no data	63
42700-1	Plate for shrub & ledge trimmer/ Plateaux pour arbustes et appareils de taille des haies	U.S.A.	2,911,266	13.60	15	9.2	n.s.	3
42700-1	Washer parts/ Pièces de laveur	U.S.A.	2,911,266	0.0	15	9.2	0.0	41
42700-1	Machine parts/ Pièces de machine	U.S.A.	2,911,266	3.03	15	9.2	n.s.	61
42700-1	Machine parts/ Pièces de machine	U.S.A.	2,911,266	16.86	15	9.2	0.011	25
42700-1	Machines, n.o.p./ Machines, n.d.	U.S.A.	2,911,266	10.24	15	9.2	0.001	7
42700-1	Machinery & access./ Machines et accessoires	U.S.A.	2,911,266	3.45	15	9.2	0.002	84
42700-1	Rough terrain crane/ Grue pour terrain accidenté	U.S.A.	2,911,266	0.0	15	9.2	0.0	99
42700-1	Reader, cards/ Lecteur, cartes	U.S.A.	2,911,266	18.53	15	9.2	0.003	89
42700-1	Computer equipment/ Matériel informatique	U.S.A.	2,911,266	10.16	15	9.2	n.s.	90
42700-1	Disk drives and controllers/ Unités de disques et contrôleurs	U.S.A.	2,911,266	4.26	15	9.2	n.s.	17
42700-1	Central processing units/ Unités centrales de traitement	U.S.A.	2,911,266	15.24	15	9.2	0.001	7
42700-1	Machines, n.o.p./ Machines, n.d.	U.S.A.	2,911,266	10.30	15	9.2	0.024	86
42700-1	Disk pack & drives/ Chargeurs et unités de disques	U.S.A.	2,911,266	7.76	15	9.2	0.026	85

TABLE I (CONT.)

TABLEAU I (SUITE)

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Tariff Item/ Numéro tarifaire	Description of Products/ Description des produits	Country/ Pays	Total Tariff Item Imports/ Total des importations sous le numéro tarifaire	Ruling Impact from Sample/ L'impact de la décision sur l'échantillon	1979 Tariff Rate/ Taux faire 1979	MTN Rate/ Taux NCM	Possible Adjustment/ Rajustement possible	Affected Imports as % of Total Imports of Commodity Class/ Importations affectées exprimées en % du total d'importations de la classe de marchandises
			- \$'000 -				%/p.c.	
42700-1	Computers/Ordinateurs	U.S.A.	2,911,266	no data	15	9.2	no data	1
42700-1	Central control units/ Unités centrales de commande	U.S.A.	2,911,266	no data	15	9.2	no data	3
42700-1	Machines & parts/ Machines et pièces	U.S.A.	2,911,266	14.92	15	9.2	0.003	8
42700-1	Central processing unit/ Unité centrale de traitement	U.S.A.	2,911,266	5.68	15	9.2	0.002	4
42700-1	Computer equipment & parts/ Matériel informatique et pièces	U.S.A.	2,911,266	7.96	15	9.2	0.035	45
42700-1	Terminals for bank tellers/ Terminaux pour caissiers de banque	U.S.A.	2,911,266	37.30	15	9.2	0.001	7
42701-1	Fork lifts & parts/ Elévateurs à fourche et pièces	U.S.A.	408,337	4.6	15	9.2	n.s.	59
42701-1	Lift trucks & parts/ Chariots élévateurs et pièces	U.S.A.	408,337	13.61	15	9.2	0.021	65
42701-1	Fork lift truck/ Chariot élévateur à fourche	U.S.A.	408,337	2.31	15	9.2	0.001	76
42701-1	Fork lift truck/ Chariot élévateur à fourche	U.S.A.	408,337	18.21	15	9.2	0.042	62
42701-1	Stacker, lift truck type/ Empileur, chariot élévateur	U.S.A.	408,337	13.06	15	9.2	0.001	43
42701-1	Lift truck/Chariot élévateur	U.S.A.	408,337	39.33	15	9.2	0.096	66

42701-1	Gas powered lift truck/ Chariot élévateur à moteur à essence	U.S.A.	408,337	12.45	15	9.2	0.019	48
42701-1	Fork lift truck & parts/ Chariot élévateur à fourche et pièces	U.S.A.	408,337	11.85	15	9.2	0.041	58
42902-1	Cutlery/Coutellerie	Korea	9,618	1.82	25	17.5	0.143	53
42906-1	Scissors & shears/ Ciseaux et cisailles	W. Germany	7,861	0.02	20	17.5	n.s.	7
42906-1	Scissors & shears/ Ciseaux et cisailles	U.S.A.	7,861	0.0	20	17.5	0.0	41
42906-1	Scissors & shears/ Ciseaux et cisailles	Italy	7,861	0.81	20	17.5	0.012	18
42906-1	Scissors & shears/ Ciseaux et cisailles	U.S.A.	7,861	0.0	20	17.5	0.0	15
42906-1	Scissors & shears/ Ciseaux et cisailles	W. Germany	7,861	0.0	20	17.5	0.0	23
42906-1	Scissors & shears/ Ciseaux et cisailles	Italy	7,861	0.01	20	17.5	n.s.	17
42906-1	Scissors & shears/ Ciseaux et cisailles	Taiwan	7,861	12.02	20	17.5	0.023	2
43000-1	Bolts and rods/ Boulons et bielles	U.S.A.	45,671	0.08	17.5	10.2	n.s.	48
43010-1	Screws/Vis	U.S.A.	33,597	2.19	17.5	12.5	0.055	40
43105-1	Garden tools/ Instruments de jardinage	U.S.A.	3,570	0.0	15	9.2	0.0	1
43105-1	Spades & shovels/ Pelles et bèches	U.S.A.	3,570	0.0	15	9.2	0.0	46
43120-1	Hand tools/Outils à main	U.S.A.	46,533	2.60	20	11.3	0.032	7
43145-1	Level measuring instruments/ Niveau-mètre	U.S.A.	4,895	1.06	12.5	8	0.033	18
43200-1	Cooking utensils/ Articles de cuisine	U.S.A.	14,642	0.0	17.5	10.2	0.0	18
43803-1	Station wagons/Familiales	Japan	976,398	3.08	15	9.2	0.022	55
43803-1	Car/Auto	Japan	976,398	12.61	15	9.2	0.223	48

TABLE I (CONT.)

TABLEAU I (SUITE)

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
Tariff Item/ Numéro tarifaire	Description of Products/ Description des produits	Country/ Pays	Total Tariff Item Imports/ Total des importations sous le numéro tarifaire	Ruling Impact from Sample/ L'impact de la décision sur l'échantillon	1979 Tariff Rate/ Taux faire 1979	MTN Rate/ Taux NCM	Possible Adjustment/ Rajustement possible	Affected Imports as % of Total Imports of Commodity Class/ Importations affectées exprimées en % du total d'importations de la classe de marchandises
			- \$'000 -					
43803-1	Motor vehicles, electric powered/ véhicule automobile à moteur électrique	U.S.A.	976,398	0.0	15	9.2	0.0	97
43829-1	Power train parts/ Pièces de groupe moto- propulseur	U.S.A.	423,391	0.0	15	9.2	0.0	62
43829-1	Mirror for motor vehicles/ Mirroirs pour véhicules automobiles	U.S.A.	423,391	0.0	15	9.2	0.0	47
43829-1	Motorcycles/Motocyclettes	Japan	73,962	10.83	12.5	8	1.065	57
43900-1	Bicycles/Bicyclettes	Poland	21,220	0.0	25	13.2	0.0	46
43900-1	Bicycles/Bicyclettes	Poland	21,220	0.0	25	13.2	0.0	41
43900-1	Bicycles/Bicyclettes	Japan	21,220	0.46	25	13.2	0.018	40
43910-1	Travel trailers/Caravanes	U.S.A.	84,513	0.0	17.5	10.2	0.0	97
43910-1	Trailers/Remorques	U.S.A.	84,513	1.93	17.5	10.2	0.015	95
43910-1	Graders/Niveleuse	U.S.A.	84,513	1.19	17.5	10.2	0.046	99
43930-1	Baby carriages/ Voitures d'enfants	U.S.A.	9,145	0.0	17.5	12.5	0.0	73
43930-1	Baby carriages/ Voitures d'enfants	U.S.A.	9,145	0.0	17.5	12.5	0.0	84
44034-1	Fishing tackle/ Engins de pêche	U.S.A.	21,764	0.0	15	10.2	0.0	61
44034-1	Fishing tackle/ Engins de pêche	Japan	21,764	2.93	15	10.2	0.003	3
44034-1	Fishing tackle/ Engins de pêche	U.S.A.	21,764	0.0	15	10.2	0.0	17

44034-1	Fishing tackle/ Engins de pêche	U.S.A.	21,764	5.68	15	10.2	0.025	80
44034-1	Fishing tackle/ Engins de pêche	U.S.A.	21,764	0.0	15	10.2	0.0	8
44034-1	Fishing tackle/ Engins de pêche	Japan	21,764	0.0	15	10.2	0.0	3
44125-1	Shotgun/Fusil de chasse	U.S.A.	28,163	no data	7.5	5.5	no data	27
44125-1	Shotgun/Fusil de chasse	U.S.A.	28,163	2.80	7.5	5.5	0.009	60
44125-1	Shotgun/Fusil de chasse	U.S.A.	28,163	2.22	7.5	5.5	0.013	92
44300-1	Fire place unit/Foyer	U.S.A.	156,379	14.12	20	11.3	0.023	26
44300-1	Stoves/Poêles	U.S.A.	156,379	0.56	20	11.3	0.004	79
44300-1	Coffee makers/Cafetières	U.S.A.	156,379	3.5	20	11.3	0.004	66
44300-1	Coffee makers/Cafetières	U.S.A.	156,379	14.58	20	11.3	0.14	94
44300-1	Toasters, electric, domestic/ Grille-pain, électrique, usage domestique	U.S.A.	156,379	0.08	20	11.3	n.s.	63
44300-1	Microwave ovens, commercial cooking/ Fours à micro-ondes, usage commercial	U.S.A.	156,379	2.6	20	11.3	0.006	98
44300-1	Microwave ovens, domestic cooking/ Fours à micro-ondes, usage domestique	U.S.A.	156,379	5.08	20	11.3	0.092	53
44300-1	Stoves, cooking solid fuel/ Poêles de cuisson Combustible solide	U.S.A.	156,379	0.0	20	11.3	0.0	87
44300-1	Grills, gas cooking/ Gril, cuisson au gaz	U.S.A.	156,379	0.0	20	11.3	0.0	98
44300-1	Stoves & ranges/ Poêles, fourneaux	U.S.A.	156,379	0.0	20	11.3	0.0	74
44300-1	Stoves & ranges, cooking gas/ Poêles, fourneaux, cuisson au gaz	U.S.A.	156,379	6.87	20	11.3	0.015	82

TABLE I (CONT.)

TABLEAU I (SUITE)

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
Tariff Item/ Numéro tarifaire	Description of Products/ Description des produits	Country/ Pays	Total Tariff Item Imports/ Total des importations sous le numéro tarifaire	Ruling Impact from Sample/ L'impact de la décision sur l'échantillon	1979 Tariff Rate/ Taux faire 1979	MTN Rate/ Taux NCM	Possible Adjustment/ Rajustement possible	Affected Imports as % of Total Imports of Commodity Class/ Importations affectées exprimées en % du total d'importations de la classe de marchandises
			- \$'000 -					
44300-1	Stoves & ranges cooking solid fuel, commercial/ Poêles, fourneaux com- bustible solide, usage commercial	U.S.A.	156,379	0.0	20	11.3	0.0	77
44300-1	Food cooking appliances electric parts/ Appareils de cuisson des aliments (électrique)	U.S.A.	156,379	1.61	20	11.3	0.009	80
44300-1	Oven cooking, electric parts/ Dispositifs électriques de cuisson au four	U.S.A.	156,379	0.02	20	11.3	n.s.	85
44300-1	Filters, microwave ovens/ Filtres, fours à micro- ondes	U.S.A.	156,379	0.0	20	11.3	0.0	74
44300-1	Toasters, electric/ Grille-pain électriques	U.S.A.	156,379	0.55	20	11.3	0.005	92
44300-1	Heating stoves and space heaters/ Poêles de chauffage et chaufferettes	U.S.A.	156,379	0.0	20	11.3	0.0	56
44300-1	Furnace, warm air heating/ Chaudière, chauffage à air chaud	U.S.A.	156,379	0.0	20	11.3	0.0	71
44400-1	Meter components/ Éléments de compteur	U.S.A.	5,361	0.01	17.5	10.2	0.002	94
44405-1	Lamps/Lampes	U.S.A.	2,816	0.0	20	11.3	0.0	46
44500-1	Illuminators, electricity, lighting fixtures/ Appareils d'éclairage électriques	U.S.A.	48,529	0.38	20	11.3	n.s.	7

44500-1	Lamps, incandescent lighting/ Lampes, lumières incandescentes	U.S.A.	48,529	0.12	20	11.3	n.s.	25
44500-1	Lamp shade holder, electric lamp parts/ Support d'abat-jour, pièces de lampes électriques	U.S.A.	48,529	0.23	20	11.3	0.001	31
44500-1	Fixtures & port lamps, lighting/ Accessoires et pièces de lampes, d'éclairage	U.S.A.	48,529	0.32	20	11.3	0.007	77
44500-1	Fixtures/Accessoires	U.S.A.	48,529	0.13	20	11.3	0.002	86
44500-1	Lamps/Lampes	U.S.A.	48,529	0.25	20	11.3	0.005	77
44504-1	Lamps/Lampes	U.S.A.	33,565	42.50	15	11.3	0.11	58
44504-1	Lamps/Lampes	U.S.A.	33,565	12.36	15	11.3	0.422	91
44504-1	Lamps/Lampes	U.S.A.	33,565	0.0	15	11.3	0.0	65
44504-1	Lamps/Lampes	U.S.A.	33,565	0.27	15	11.3	n.s.	46
44504-1	Lamps/Lampes	U.S.A.	33,565	14.75	15	11.3	0.013	45
44504-1	Lamps/Lampes	U.S.A.	33,565	0.0	15	11.3	0.0	78
44504-1	Lamps/Lampes	U.S.A.	33,565	2.24	15	11.3	0.019	50
44504-1	Lamps/Lampes	U.S.A.	33,565	28.84	15	11.3	0.019	1
44504-1	Lamps/Lampes	U.S.A.	33,565	11.13	15	11.3	0.328	83
44504-1	Lamps/Lampes	U.S.A.	33,565	14.05	15	11.3	0.017	10
44504-1	Lamps/Lampes	U.S.A.	33,565	17.57	15	11.3	0.003	43
44504-1	Lamps/Lampes	U.S.A.	33,565	19.04	15	11.3	0.042	76
44504-1	Lamps/Lampes	U.S.A.	33,565	0.0	15	11.3	0.0	2
44506-1	Telegraph equipment/ Télégraphe	U.S.A.	21,966	1.38	17.5	10.2	0.062	69
44508-1	Telephone apparatus/ Appareils de téléphone	U.S.A.	92,990	1.66	17.5	10.2	0.098	74
44508-1	Telephones/Téléphones	U.S.A.	92,990	0.84	17.5	10.2	0.059	81
44512-1	Batteries/Piles	U.S.A.	40,497	1.77	17.5	10.2	0.073	63

TABLE I (CONT.)

TABLEAU I (SUITE)

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
Tariff Item/ Numéro tarifaire	Description of Products/ Description des produits	Country/ Pays	Total Tariff Item Imports/ Total des importations sous le numéro tarifaire	Ruling Impact from Sample/ L'impact de la décision sur l'échantillon	1979 Tariff Rate/ Taux tari- faire 1979	MTN Rate/ Taux NCM	Possible Adjustment/ Rajustement possible	Affected Imports as % of Total Imports of Commodity Class/ Importations affectées exprimées en % du total d'importations de la classe de marchandises
			- \$'000 -				----- %/p.c. -----	
44512-1	Batteries/Piles	U.S.A.	40,497	16.41	17.5	10.2	0.005	67
44512-1	Batteries/Piles	U.S.A.	40,497	30.69	17.5	10.2	0.898	65
44512-1	Batteries/Piles	U.S.A.	40,497	3.43	17.5	10.2	0.040	49
44514-1	Regulators/Régulateurs	U.S.A.	93,050	0.0	15	9.2	0.0	14
44514-1	Transformers/Transformateurs	U.S.A.	93,050	0.04	15	9.2	0.001	60
44516-1	Machine flanges/ Ailes de machines	U.S.A.	125,233	0.58	15	9.2	0.12	68
44516-1	Electric motors/ Moteurs électriques	U.S.A.	125,233	3.54	15	9.2	0.42	80
44516-1	Electric motors/ Moteurs électriques	U.S.A.	125,233	4.71	15	9.2	0.37	79
44518-1	Electric fence insulation/ Isolation de clôture électrique	U.S.A.	14,653	2.03	15	9.2	0.033	49
44524-1	Electrical apparatus & parts/ Appareils électriques et pièces	U.S.A.	560,403	0.0	17.5	10.2	0.0	45
44524-1	Electrical apparatus & parts/ Appareils électriques et pièces	U.S.A.	560,403	0.0	17.5	10.2	0.0	98
44524-1	Electrical apparatus & parts/ Appareils électriques et pièces	U.S.A.	560,403	6.44	17.5	10.2	0.002	95

44524-1	Electrical apparatus & parts/ Appareils électriques et pièces	U.S.A.	560,403	0.0	17.5	10.2	0.0	99
44524-1	Electrical apparatus & parts/ Appareils électriques et pièces	U.S.A.	560,403	0.0	17.5	10.2	0.0	94
44524-1	Electrical apparatus & parts/ Appareils électriques et pièces	U.S.A.	560,403	0.0	17.5	10.2	0.0	96
44524-1	Electrical apparatus & parts/ Appareils électriques et pièces	U.S.A.	560,403	0.0	17.5	10.2	0.0	91
44524-1	Electrical apparatus & parts/ Appareils électriques et pièces	U.S.A.	560,403	12.92	17.5	10.2	0.002	72
44524-1	Electrical apparatus & parts/ Appareils électriques et pièces	U.S.A.	560,403	0.0	17.5	10.2	0.0	99
44524-1	Electrical apparatus & parts/ Appareils électriques et pièces	U.S.A.	560,403	0.0	17.5	10.2	0.0	33
44524-1	Electrical apparatus & parts/ Appareils électriques et pièces	U.S.A.	560,403	0.0	17.5	10.2	0.0	98
44524-1	Electrical apparatus & parts/ Appareils électriques et pièces	U.S.A.	560,403	0.0	17.5	10.2	0.0	77
44524-1	Electrical apparatus & parts/ Appareils électriques et pièces	U.S.A.	560,403	8.03	17.5	10.2	n.s.	58
44524-1	Electrical apparatus & parts/ Appareils électriques et pièces	U.S.A.	560,403	0.0	17.5	10.2	0.0	n.a.

TABLE I (CONT.)

TABLEAU I (SUITE)

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
Tariff Item/ Numéro tarifaire	Description of Products/ Description des produits	Country/ Pays	Total Tariff Item Imports/ Total des importations sous le numéro tarifaire	Ruling Impact from Sample/ L'impact de la décision sur l'échantillon	1979 Tariff Rate/ Taux tari- faire 1979	MTN Rate/ Taux NCM	Possible Adjustment/ Rajustement possible	Affected Imports as % of Total Imports of Commodity Class/ Importations affectées exprimées en % du total d'importations de la classe de marchandises
			- \$'000 -					
44524-1	Electrical apparatus & parts/ Appareils électriques et pièces	U.S.A.	560,403	0.0	17.5	10.2	0.0	4
44524-1	Electrical apparatus & parts/ Appareils électriques et pièces	U.S.A.	560,403	0.0	17.5	10.2	0.0	46
44524-1	Electrical apparatus & parts/ Appareils électriques et pièces	U.S.A.	560,403	7.22	17.5	10.2	0.009	83
44524-1	Electrical apparatus & parts/ Appareils électriques et pièces	U.S.A.	560,403	6.31	17.5	10.2	0.049	25
44524-1	Electrical apparatus & parts/ Appareils électriques et pièces	U.S.A.	560,403	2.49	17.5	10.2	0.002	93
44524-1	Electrical apparatus & parts/ Appareils électriques et pièces	U.S.A.	560,403	0.41	17.5	10.2	n.s.	76
44524-1	Electrical apparatus & parts/ Appareils électriques et pièces	U.S.A.	560,403	3.81	17.5	10.2	0.001	84
44524-1	Electrical apparatus & parts/ Appareils électriques et pièces	U.S.A.	560,403	0.31	17.5	10.2	n.s.	92

44524-1	Electrical apparatus & parts/ Appareils électriques et pièces	U.S.A.	560,403	0.0	17.5	10.2	0.0	50
44524-1	Electrical apparatus & parts/ Appareils électriques et pièces	U.S.A.	560,403	3.46	17.5	10.2	0.005	44
44524-1	Electrical apparatus & parts/ Appareils électriques et pièces	U.S.A.	560,403	no data	17.5	10.2	no data	39
44524-1	Electrical apparatus & parts/ Appareils électriques et pièces	U.S.A.	560,403	0.0	17.5	10.2	0.0	87
44524-1	Electrical apparatus & parts/ Appareils électriques et pièces	U.S.A.	560,403	0.0	17.5	10.2	0.0	73
44524-1	Electrical apparatus & parts/ Appareils électriques et pièces	U.S.A.	560,403	no data	17.5	10.2	no data	94
44524-1	Electrical apparatus & parts/ Appareils électriques et pièces	U.S.A.	560,403	no data	17.5	10.2	no data	5
44524-1	Electrical apparatus & parts/ Appareils électriques et pièces	U.S.A.	560,403	8.97	17.5	10.2	0.017	12
44524-1	Electrical apparatus & parts/ Appareils électriques et pièces	U.S.A.	560,403	no data	17.5	10.2	no data	26
44524-1	Electrical apparatus & parts/ Appareils électriques et pièces	U.S.A.	560,403	no data	17.5	10.2	no data	5
44524-1	Electrical apparatus & parts/ Appareils électriques et pièces	U.S.A.	560,403	0.14	17.5	10.2	n.s.	1

TABLE I (CONT.)

TABLEAU I (SUITE)

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
Tariff Item/ Numéro tarifaire	Description of Products/ Description des produits	Country/ Pays	Total Tariff Item Imports/ Total des importations sous le numéro tarifaire	Ruling Impact from Sample/ L'impact de la décision sur l'échantillon	1979 Tariff Rate/ Taux tarifaire 1979	MTN Rate/ Taux NCM	Possible Adjustment/ Rajustement possible	Affected Imports as % of Total Imports of Commodity Class/ Importations affectées exprimées en % du total d'importations de la classe de marchandises
			- \$'000 -					
44524-1	Electrical apparatus & parts/ Appareils électriques et pièces	U.S.A.	560,403	0.0	17.5	10.2	0.0	2
44524-1	Electrical apparatus & parts/ Appareils électriques et pièces	U.S.A.	560,403	no data	17.5	10.2	no data	8
44524-1	Electrical apparatus & parts/ Appareils électriques et pièces	U.S.A.	560,403	14.55	17.5	10.2	0.004	17
44524-1	Electrical apparatus & parts/ Appareils électriques et pièces	U.S.A.	560,403	no data	17.5	10.2	no data	n.a.
44524-1	Electrical apparatus & parts/ Appareils électriques et pièces	U.S.A.	560,403	no data	17.5	10.2	no data	1
44524-1	Electrical apparatus & parts/ Appareils électriques et pièces	U.S.A.	560,403	2.52	17.5	10.2	n.s.	18
44524-1	Electrical apparatus & parts/ Appareils électriques et pièces	U.S.A.	560,403	2.53	17.5	10.2	0.002	44
44524-1	Electrical apparatus & parts/ Appareils électriques et pièces	U.S.A.	560,403	0.33	17.5	10.2	n.s.	19

44524-1	Electrical apparatus & parts/ Appareils électriques et pièces	U.S.A.	560,403	13.72	17.5	10.2	0.009	59
44524-1	Electrical apparatus & parts/ Appareils électriques et pièces	U.S.A.	560,403	15.68	17.5	10.2	0.016	19
44524-1	Electrical apparatus & parts/ Appareils électriques et pièces	U.S.A.	560,403	15.00	17.5	10.2	0.001	3
44524-1	Electrical apparatus & parts/ Appareils électriques et pièces	U.S.A.	560,403	5.92	17.5	10.2	0.003	40
44524-1	Electrical apparatus & parts/ Appareils électriques et pièces	U.S.A.	560,403	no data	17.5	10.2	no data	2
44524-1	Electrical apparatus & parts/ Appareils électriques et pièces	U.S.A.	560,403	8.36	17.5	10.2	0.001	2
44524-1	Electrical apparatus & parts/ Appareils électriques et pièces	U.S.A.	560,403	0.79	17.5	10.2	n.s.	3
44524-1	Electrical apparatus & parts/ Appareils électriques et pièces	U.S.A.	560,403	0.15	17.5	10.2	n.s.	9
44524-1	Electrical apparatus & parts/ Appareils électriques et pièces	U.S.A.	560,403	21.70	17.5	10.2	0.057	20
44524-1	Electrical apparatus & parts/ Appareils électriques et pièces	U.S.A.	560,403	2.95	17.5	10.2	n.s.	18
44524-1	Electrical apparatus & parts/ Appareils électriques et pièces	U.S.A.	560,403	28.50	17.5	10.2	0.008	4

TABLE I (CONT.)

TABLEAU I (SUITE)

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
Tariff Item/Numéro tarifaire	Description of Products/Description des produits	Country/Pays	Total Tariff Item Imports/Total des importations sous le numéro tarifaire	Ruling Impact from Sample/L'impact de la décision sur l'échantillon	1979 Tariff Rate/Taux faire 1979	MTN Rate/Taux NCM	Possible Adjustment/Rajustement possible	Affected Imports as % of Total Imports of Commodity Class/Importations affectées exprimées en % du total d'importations de la classe de marchandises
			- \$'000 -					
44524-1	Electrical apparatus & parts/ Appareils électriques et pièces	U.S.A.	560,403	no data	17.5	10.2	no data	n.a.
44524-1	Electrical apparatus & parts/ Appareils électriques et pièces	U.S.A.	560,403	10.95	17.5	10.2	n.s.	n.a.
44524-1	Electrical apparatus & parts/ Appareils électriques et pièces	U.S.A.	560,403	4.44	17.5	10.2	0.026	10
44524-1	Electrical apparatus & parts/ Appareils électriques et pièces	U.S.A.	560,403	no data	17.5	10.2	no data	n.a.
44524-1	Electrical apparatus & parts/ Appareils électriques et pièces	U.S.A.	560,403	1.16	17.5	10.2	n.s.	n.a.
44524-1	Electrical apparatus & parts/ Appareils électriques et pièces	U.S.A.	560,403	14.33	17.5	10.2	0.019	51
44524-1	Electrical apparatus & parts/ Appareils électriques et pièces	U.S.A.	560,403	25.88	17.5	10.2	0.011	3
44524-1	Electrical apparatus & parts/ Appareils électriques et pièces	U.S.A.	560,403	0.0	17.5	10.2	0.0	10

44524-1	Electrical apparatus & parts/ Appareils électriques et pièces	U.S.A.	560,403	7.47	17.5	10.2	0.004	15
44524-1	Electrical apparatus & parts/ Appareils électriques et pièces	U.S.A.	560,403	10.80	17.5	10.2	0.21	29
44533-1	Antennas/Antennes	U.S.A.	659,837	6.50	15	9.2	0.005	88
44533-1	Electronic equipment/ Equipement électronique	U.S.A.	659,837	57.05	15	9.2	0.356	28
44533-1	Radio & television parts/ Radios-téléviseurs et pièces	U.S.A.	659,837	11.27	15	9.2	0.029	27
44534-1	Stereo phonograph/ Phonographe stéréophonique	U.S.A.	7,594	0.0	15	Free	0.0	6
44535-1	Phonograph/Phonographe	U.S.A.	5,271	0.0	15	Free	0.0	83
44535-1	Console stereo/ Phonographe stéréophonique dans un meuble	U.S.A.	5,271	0.0	15	Free	0.0	5
44535-1	Record players/ Tourne-disques	U.S.A.	5,271	0.56	15	Free	0.033	78
44535-1	Record players/ Tourne-disques	U.S.A.	5,271	0.0	15	Free	0.0	10
44536-1	Record players/ Tourne-disques	U.S.A.	49,780	1.41	7.5	5.5	0.001	11
44533-1	Speakers/Haut-parleurs	Japan	659,837	7.15	15	9.2	n.s.	n.a.
44533-1	Electronic parts/ Pièces électroniques	U.S.A.	659,837	2.62	15	9.2	0.004	63
44533-1	Television parts/ Pièces de téléviseurs	U.S.A.	659,837	0.0	15	9.2	0.0	51
44533-1	Radio telecommunications/ Télécommunications radio-phoniques	U.S.A.	659,837	0.23	15	9.2	0.001	39
44533-1	Colour televisions/ Téléviseurs couleurs	U.S.A.	659,837	6.35	15	9.2	0.001	86
44533-1	Television/Téléviseurs	U.S.A.	659,837	9.98	15	9.2	0.046	78

TABLE I (CONT.)

TABLEAU I (SUITE)

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
Tariff Item/ Numéro tarifaire	Description of Products/ Description des produits	Country/ Pays	Total Tariff Item Imports/ Total des importations sous le numéro tarifaire	Ruling Impact from Sample/ L'impact de la décision sur l'échantillon	1979 Tariff Rate/ Taux faire 1979	MTN Rate/ Taux NCM	Possible Adjustment/ Rajustement possible	Affected Imports as % of Total Imports of Commodity Class/ Importations affectées exprimées en % du total d'importations de la classe de marchandises
			- \$'000 -				----- %/p.c. -----	
44533-1	Black & white television/ Téléviseur (noir et blanc)	South Korea	659,837	0.0	15	9.2	0.0	63
44533-1	Clock radio/Radio-réveil	Hong Kong	659,837	6.66	15	9.2	0.012	50
44533-1	Radio stereo receivers/ Récepteurs radios/ stéréophoniques	Japan	659,837	24.26	15	9.2	0.183	79
44536-1	Record changers & turntables/ Changeurs de disques et tourne-disques	Japan	49,780	6.99	7.5	5.5	0.281	74
44536-1	Turntables/Tourne-disques	Japan	49,780	32.58	7.5	5.5	0.003	2
44536-1	Turntables/Tourne-disques	U.K.	49,780	1.51	7.5	5.5	0.014	17
44536-1	Microphones/Microphones	U.S.A.	49,780	3.21	7.5	5.5	0.013	60
44536-1	Record changers/ Changeurs de disques	U.S.A.	49,780	9.64	7.5	5.5	0.009	2
44538-1	Video cassette recorder/ Enregistreur à vidéo- cassette	Japan	113,675	4.25	12.5	8	0.062	88
44538-1	Recorder reproducers/ Enregistreurs-reproducteurs	Japan	113,675	4.52	12.5	8	0.021	57
44538-1	Record changers/ Changeurs de disques	Japan	113,675	0.0	12.5	8	0.0	n.a.
44540-1	Amplifier/Amplificateurs	Japan	98,431	23.75	15	9.2	0.327	67
44540-1	Speakers/Haut-parleurs	Japan	98,431	23.43	15	9.2	0.331	40
44540-1	Speakers/Haut-parleurs	U.S.A.	98,431	3.03	15	9.2	0.067	48

44540-1	Audio amplifiers/ Amplificateurs d'audio- fréquences	U.S.A.	98,431	4.25	15	9.2	0.040	53
44540-1	Loudspeaker parts/ Pièces de haut-parleurs	U.S.A.	98,431	4.90	15	9.2	0.036	43
44540-1	Loudspeaker/Haut-parleurs	U.S.A.	98,431	8.06	15	9.2	0.151	41
44542-1	Television picture tubes/ Tubes-images de téléviseurs	U.S.A.	26,796	1.13	15	9.2	0.034	77
44533-1	Car radios & stereos/ Radios et systèmes de son pour véhicules auto- mobiles	U.S.A.	659,837	2.13	15	9.2	0.001	6
44533-1	Radio with cassette recorder/ Radio-magnétophone à cassettes	Japan	659,837	8.90	15	9.2	0.020	40
44533-1	Loudspeakers/Haut-parleurs	Japan	659,837	0.0	15	9.2	0.0	n.a.
44533-1	Loudspeakers/Haut-parleurs	U.S.A.	659,837	0.0	15	9.2	0.0	1
44603-1	Steel blanks/Lingots d'acier	U.S.A.	592,682	7.72	17.5	10.2	0.002	35
44603-1	Swimming pool frames/ Charpentes de piscine	U.S.A.	592,682	2.19	17.5	10.2	n.s.	96
44603-1	Frames/Charpentes	U.S.A.	592,682	21.55	17.5	10.2	0.005	29
44603-1	Swimming pools & parts/ Piscines et pièces	U.S.A.	592,682	0.0	17.5	10.2	0.0	12
44603-1	Shredder/Déchiqueteur	U.S.A.	592,682	0.0	17.5	10.2	0.0	80
44603-1	Gas bottles/Bouteilles à gaz	U.S.A.	592,682	0.0	17.5	10.2	0.0	39
44603-1	Steel bottles/ Bouteilles en acier	U.S.A.	592,682	1.10	17.5	10.2	n.s.	25
44603-1	Gym equipment/ Equipement de gymnase	U.S.A.	592,682	0.0	17.5	10.2	0.0	38
44603-1	Steel framework/ Charpente en acier	U.S.A.	592,682	0.05	17.5	10.2	n.s.	50
44603-1	Nursing home beds/ Lits pour maison de convalescence	U.S.A.	592,682	0.0	17.5	10.2	0.0	34
44603-1	Hand tools/Outils à main	U.S.A.	592,682	2.62	17.5	10.2	0.004	57

TABLE I (CONT.)

TABLEAU I (SUITE)

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
Tariff Item/ Numéro tarifaire	Description of Products/ Description des produits	Country/ Pays	Total Tariff Item Imports/ Total des importations sous le numéro tarifaire	Ruling Impact from Sample/ L'impact de la décision sur l'échantillon	1979 Tariff Rate/ Taux faire 1979	MTN Rate/ Taux NCM	Possible Adjustment/ Rajustement possible	Affected Imports as % of Total Imports Importations affectées exprimées en % du total d'importations de la classe de marchandises
			- \$'000 -					
44603-1	Torch kit/ Nécessaire à chalumeau	U.S.A.	592,682	84.5	17.5	10.2	0.004	37
44603-01	Riveter/Riveuse	U.S.A.	592,682	0.0	17.5	10.2	0.0	4
44603-1	Hand tools/Outils à main	U.S.A.	592,682	0.0	17.5	10.2	0.0	6
44603-1	Tools/Outils	U.S.A.	592,682	7.32	17.5	10.2	0.008	46
44603-1	Hand tools/Outils à main	U.S.A.	592,682	4.93	17.5	10.2	0.030	51
44603-1	Tools/Outils	U.S.A.	592,682	0.0	17.5	10.2	0.0	10
44603-1	Security vault/Chambre forte	U.S.A.	592,682	0.0	17.5	10.2	0.0	73
44603-1	Security vault/Chambre forte	U.S.A.	592,682	0.0	17.5	10.2	0.0	6
44603-1	Steel parts/Pièces en acier	U.S.A.	592,682	0.69	17.5	10.2	n.s.	24
44603-1	Cleaning equipment/ Matériel de nettoyage	U.S.A.	592,682	0.0	17.5	10.2	0.0	4
44603-1	Automotive alignment equipment/ Equipement pour l'entretien des véhicules	U.S.A.	592,682	12.02	17.5	10.2	0.001	5
44603-1	Shower parts/ Pièces de douche	U.S.A.	592,682	0.0	17.5	10.2	0.0	32
44603-1	Butterfly valves/ Soupapes à papillon	U.S.A.	592,682	5.16	17.5	10.2	0.002	66
44603-1	Toolbox metal end product/ Coffret à outils, en acier	U.S.A.	592,682	2.86	17.5	10.2	0.021	64
44603-1	Household furniture/ Meubles de maison	U.S.A.	592,682	0.0	17.5	10.2	0.0	n.a.
44612-1	Cylinder container/ Contenant cylindrique	U.S.A.	5,549	12.01	17.5	10.2	0.59	17

44612-1	Compressed CO ² cylinder/ Cylindre pour CO ² comprimé	U.S.A.	5,549	3.94	17.5	10.2	0.053	20
44621-1	Welding apparatus/ Appareils de soudure	U.S.A.	34,426	0.0	15	9.2	0.0	38
46105-1	Safes/Coffres-forts	U.S.A.	10,722	no data	17.5	10.2	no data	6
46105-1	Safes/Coffres-forts	U.S.A.	10,722	0.0	17.5	10.2	0.0	70
46105-1	Scales/Balances	U.S.A.	10,722	3.14	17.5	10.2	0.014	47
46200-1	Water meters/Compteurs d'eau	U.S.A.	87,110	0.0	15	7.5	0.0	33
46200-1	Photographic equipment/ Appareils photographiques	U.S.A.	87,110	5.56	15	7.5	0.006	6
46500-1	Letters & numerals/ Lettres et chiffres	U.S.A.	5,187	0.08	20	11.3	0.003	36
50600-1	Plywood & hardwood/ Contre-plaqué en bois dur	U.S.A.	88,895	0.0	15	9.2	0.0	4
50600-1	Gymnastic apparatus/ Appareils de gymnastique	U.S.A.	88,895	0.0	15	9.2	0.0	2
50600-1	Cheeseboards/ Planches à fromage	Taiwan	88,895	2.67	15	9.2	0.001	34
50603-1	Hockey sticks/ Bâtons de hockey	Finland	8,999	0.0	5	4	0.0	45
50715-1	Finished plywood/ Contre-plaqué à extérieur fini	U.S.A.	57,504	0.0	15	8	0.0	37
50715-1	Plywood/Contre-plaqué	U.S.A.	57,504	0.04	15	8	0.001	91
50715-1	Plywood/Contre-plaqué	U.S.A.	57,504	0.03	15	8	n.s.	87
50715-1	Plywood/Contre-plaqué	U.S.A.	57,504	0.0	15	8	0.0	96
50715-1	Plywood/Contre-plaqué	U.S.A.	57,504	12.61	15	8	0.012	97
50715-1	Plywood/Contre-plaqué	U.S.A.	57,504	0.0	15	8	0.0	100
50715-1	Plywood/Contre-plaqué	U.S.A.	57,504	0.0	15	8	0.0	100
50715-1	Plywood/Contre-plaqué	U.S.A.	57,504	0.0	15	8	0.0	100
51100-1	Golf clubs/Crosses de golf	U.S.A.	33,536	7.43	15	11.3	0.144	95
51100-1	Golf balls/Balles de golf	U.S.A.	33,536	8.98	15	11.3	0.175	88

TABLE I (CONT..)

TABLEAU I (SUITE)

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
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			- \$'000 -				%/p.c.	
51110-1	Skis/Skis	Japan	28,476	0.0	15	11.3	0.0	6
51110-1	Skis/Skis	Austria	28,476	2.08	15	11.3	0.042	27
51110-1	Skis/Skis	U.S.A.	28,476	6.38	15	11.3	0.053	11
51110-1	Skis/Skis	Switzerland	28,476	0.0	15	11.3	0.0	1
51110-1	Skis/Skis	Finland	28,476	0.12	15	11.3	0.001	11
51110-1	Skis/Skis	Sweden	28,476	0.0	15	11.3	0.0	1
51110-1	Ski equipment/Equipement de ski	Spain	28,476	no data	15	11.3	no data	5
51100-1	Golf clubs/Crosses de golf	U.S.A.	33,536	0.0	15	11.3	0.0	19
51100-1	Golf clubs/Crosses de golf	U.S.A.	33,536	9.34	15	11.3	0.114	95
51400-1	Metal caskets/Cercueils en métal	U.S.A.	5,065	29.74	15	15	2.4	100
51600-1	Venetian blinds/Stores vénitiens	U.S.A.	1,019	2.59	20	11.3	0.103	35
51805-1	Billiard table/Table de billard	U.S.A.	5,866	13.53	20	15	1.220	97
51901-1	Furniture & fixtures/Meubles et accessoires	U.S.A.	167,365	3.30	20	15	0.006	33
51901-1	Wood furniture/Meubles en bois	Belgium	167,365	8.93	20	15	0.001	n.a.
51901-1	Furniture/Meubles	Denmark	167,365	0.13	20	15	n.s.	14
51901-1	Furniture/Meubles	Sweden	167,365	0.0	20	15	0.0	5
51901-1	Household furniture/Meubles de maison	W. Germany	167,365	0.0	20	15	0.0	3

51901-1	Furniture/Meubles	Norway	167,365	0.0	20	15	0.0	n.a.
51901-1	Office furniture/ Meubles de bureau	U.S.A.	167,365	7.18	20	15	0.016	89
51901-1	Bedroom suites/ Meubles de chambre à coucher	U.S.A.	167,365	0.0	20	15	0.0	4
51901-1	Furniture/Meubles	U.S.A.	167,365	0.68	20	15	0.008	53
51901-1	Kitchen cabinets/ Armoires de cuisine	W. Germany	167,365	0.0	20	15	0.0	1
51901-1	Furniture/Meubles	W. Germany	167,365	0.0	20	15	0.0	2
51901-1	Furniture/Meubles	U.S.A.	167,365	0.74	20	15	0.012	65
51901-1	Kitchen furniture/ Meubles de cuisine	U.S.A.	167,365	0.44	20	15	0.003	67
51901-1	Bedroom furniture/ Meubles de chambre à coucher	W. Germany	167,365	0.11	20	15	n.s.	1
51901-1	Furniture/Meubles	Belgium	167,365	1.20	20	15	n.s.	n.a.
51901-1	Furniture/Meubles	U.S.A.	167,365	no data	20	15	no data	85
51901-1	Furniture/Meubles	Taiwan	167,365	1.03	20	15	n.s.	n.a.
51901-1	Kitchen cabinets/ Armoires de cuisine	Denmark	167,365	0.0	20	15	0.0	20
51901-1	Furniture/Meubles	W. Germany	167,365	0.0	20	15	0.0	1
51901-1	Furniture/Meubles	Taiwan	167,365	1.36	20	15	0.002	5
51901-1	Bedroom furniture/ Meubles de chambre à coucher	U.S.A.	167,375	1.75	20	15	0.042	85
51901-1	Furniture/Meubles	Denmark	167,365	0.40	20	15	0.001	7
51901-1	Furniture/Meubles	Taiwan	167,365	0.65	20	15	0.001	3
51901-1	Furniture/Meubles	Belgium	167,365	0.0	20	15	0.0	n.a.
51901-1	Furniture/Meubles	Denmark	167,365	0.57	20	15	0.002	17
51901-1	Furniture/Meubles	Norway	167,365	0.27	20	15	n.s.	n.a.
51901-1	Furniture/Meubles	W. Germany	167,365	0.0	20	15	0.0	2
51901-1	Furniture/Meubles	U.S.A.	167,365	0.31	20	15	0.004	55
51901-1	Furniture/Meubles	Denmark	167,365	1.42	20	15	0.004	10

TABLE I (CONT.)

TABLEAU I (SUITE)

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
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			- \$'000 -				%/p.c.	
51902-1	Desk cabinet/Bureau cabinet	U.S.A.	50,650	3.22	17.5	12.5	0.028	43
51902-1	Steel shelving/ Etagères en acier	U.S.A.	50,650	8.95	17.5	12.5	0.093	63
51902-1	Cabinets/Cabinets	U.S.A.	50,650	1.86	17.5	12.5	0.014	76
51902-1	Bedroom suites/ Meubles de chambre à coucher	U.S.A.	50,650	0.02	17.5	12.5	n.s.	77
51902-1	Household furniture/ Meubles de maison	U.S.A.	50,650	0.17	17.5	12.5	n.s.	4
51902-1	Hospital beds & parts/ Lits d'hôpital et pièces	U.S.A.	50,650	0.0	17.5	12.5	0.0	n.a.
52203-1	Denim/Denim	U.S.A.	94,490	0.90	20	17.5	0.035	69
52305-1	Shirts & blouses/ Chemises et blouses	U.S.A.	140,482	0.0	22.5	22.5	0.0	1
53305-1	Hair accessories/ Accessoires pour les cheveux	U.S.A.	37,919	0.0	25	25	0.0	20
52305-1	Slip covers/Housses	U.S.A.	140,482	0.0	22.5	22.5	0.0	10
52305-1	Shirts & blouses/ Chemises et blouses	U.S.A.	140,482	0.0	22.5	22.5	0.0	n.a.
52305-1	Shirts & blouses/ Chemises et blouses	U.S.A.	140,482	0.01	22.5	22.5	n.s.	5
52305-1	Shirts & blouses/ Chemises et blouses	U.S.A.	140,482	no data	22.5	22.5	no data	1
52305-1	Cotton jeans/Jeans de coton	Puerto Rico	140,482	0.0	22.5	22.5	0.0	6
52305-1	Jeans & pants/ Jeans et pantalons	U.S.A.	140,482	0.0	22.5	22.5	0.0	2
52305-1	Pants/Pantalons	U.S.A.	140,482	0.0	22.5	22.5	0.0	7

52305-1	Outdoor jackets/ Vestons d'extérieur	Hong Kong	140,482	33.3	22.5	22.5	0.002	82
52305-1	Cotton woven dress/ Robe en tissu de coton	U.S.A.	140,482	0.0	22.5	22.5	0.0	n.a.
52305-1	Cotton woven dresses/ Robes en tissu de coton	U.S.A.	140,482	0.09	22.5	22.5	n.s.	12
52305-1	Brassieres/Soutiens-gorge	Philippines	140,482	no data	22.5	22.5	no data	66
54125-1	Synthetic rope/ Câble synthétique	U.S.A.	2,280	0.0	20	20	0.0	4
54125-1	Polypropylene rope/ Câble de polypropylène	South Korea	2,280	18.50	20	20	0.112	7
54125-1	Polypropylene rope/ Câble de polypropylène	South Korea	2,280	0.0	20	20	0.0	37
54125-1	Polypropylene rope/ Câble de polypropylène	U.S.A.	2,280	0.0	20	20	0.0	18
56110-1	Rope/Câble	U.S.A.	132,317	0.0	10	10	0.0	3
56300-1	Comforters/Edredons	U.S.A.	251,589	0.0	25	25	0.0	51
56300-1	Cushions/Coussins	U.S.A.	251,589	0.0	25	25	0.0	12
56300-1	Sheets/Draps	U.S.A.	251,589	no data	25	25	no data	60
56300-1	Sheets & pillowcases/ Draps et taies d'oreiller	U.S.A.	251,589	2.79	25	25	n.s.	68
56300-1	Sheets & pillow cases/ Draps et taies d'oreiller	U.S.A.	251,589	0.14	25	25	n.s.	63
56300-1	Sheets & pillow cases/ Draps et taies d'oreiller	U.S.A.	251,589	0.0	25	25	0.0	100
56300-1	Pillows/Taies d'oreiller	U.S.A.	251,589	0.0	25	25	0.0	47
56300-1	Sheets/Draps	U.S.A.	251,589	0.0	25	25	0.0	94
56300-1	Sheets/Draps	U.S.A.	251,589	10.09	25	25	0.008	85
56300-1	Pillows/Oreillers	U.S.A.	251,589	0.0	25	25	0.0	55
56300-1	Pillow covers/ Couvre-oreillers	U.S.A.	251,589	0.0	25	25	0.0	53
56300-1	Mattress pad/Couvre-matelas	U.S.A.	251,589	0.0	25	25	0.0	31

TABLE I (CONT.)

TABLEAU I (SUITE)

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Tariff Item/ Numéro tarifaire	Description of Products/ Description des produits	Country/ Pays	Total Tariff Item Imports/ Total des importations sous le numéro tarifaire	Ruling Impact from Sample/ L'impact de la décision sur l'échantillon	1979 Tariff Rate/ Taux faire	Possible Adjustment/ Rajustement possible		Affected Imports as % of Total Imports of Commodity Class/ Importations affectées exprimées en % du total d'importations de la classe de marchandises
						MTN Rate/ Taux	NCM	
----- %/p.c. -----								
56300-1	Synthetic hair goods/ Produits pour cheveux synthétiques	Korea	251,589	0.09	25	25	n.s.	42
56300-1	Sheets & pillowcases/ Draps et taies d'oreiller	U.S.A.	251,589	0.0	25	25	0.0	58
56300-1	Pillowcases/Taies d'oreiller	U.S.A.	251,589	0.0	25	25	0.0	100
56300-1	Pillowcases/Taies d'oreiller	U.S.A.	251,589	0.0	25	25	0.0	96
56300-1	Sheets/Draps	U.S.A.	251,589	0.0	25	25	0.0	95
56300-1	Sheets/Draps	U.S.A.	251,589	0.0	25	25	0.0	63
56300-1	Sheets/Draps	U.S.A.	251,589	0.0	25	25	0.0	83
56300-1	Sheets & pillowcases/ Draps et taies d'oreiller	U.S.A.	251,589	0.0	25	25	0.0	85
56300-1	Cotton & poly products/ Produits de coton et de polyester	U.S.A.	251,589	0.0	25	25	0.0	33
56300-1	Blouses/Blouses	U.S.A.	251,589	0.0	25	25	0.0	n.a.
56300-1	Blouses & shirts/ Blouses et chemises	U.S.A.	251,589	0.0	25	25	0.0	4
56300-1	Blouses & shirts/ Blouses et chemises	U.S.A.	251,589	0.0	25	25	0.0	2
56300-1	Blouses & shirts/ Blouses et chemises	U.S.A.	251,589	0.92	25	25	n.s.	4
56300-1	Outdoor jackets/ Vestons d'extérieur	Hong Kong	251,589	33.3	25	25	0.009	22
56300-1	Dresses/Robes	U.S.A.	251,589	0.0	25	25	0.0	39
56300-1	Wearing apparel/Vêtements	U.S.A.	251,589	no data	25	25	no data	53

56300-1	Dresses/Robes	U.S.A.	251,589	0.0	25	25	0.0	48
56300-1	Dresses/Robes	U.S.A.	251,589	0.0	25	25	0.0	60
56300-1	Dresses/Robes	U.S.A.	251,589	0.40	25	25	n.s.	41
56300-1	Woven dresses/Robes tissées	U.S.A.	251,589	0.0	25	25	0.0	39
56300-1	Dresses/Robes	U.S.A.	251,589	0.0	25	25	0.0	65
56300-1	Dresses/Robes	U.S.A.	251,589	0.19	25	25	n.s.	44
56300-1	Dresses/Robes	U.S.A.	251,589	0.0	25	25	0.0	7
56300-1	Blouses/Blouses	South Korea	251,589	15	25	25	0.032	19
56300-1	Blouses & shirts/ Blouses et chemises	U.S.A.	251,589	0.0	25	25	0.0	5
56300-1	Paper masking tape/ Ruban-cache de papier	U.S.A.	251,589	no data	25	25	no data	4
56300-1	Blouses & shirts/ Blouses et chemises	U.S.A.	251,589	0.0	25	25	0.0	6
56510-1	Synthetic fibre rope/ Câble de fibre synthétique	U.S.A.	3,446,000	0.0	22.5	20	0.0	4
56805-1	Brassieres/Soutiens-gorge	U.K.	332,710	no data	20	25	no data	17
56805-1	Brassieres/Soutiens-gorge	Philippines	332,710	no data	27.5	27.5	no data	21
56805-1	Brassieres/Soutiens-gorge	U.K.	332,710	no data	20	25	no data	30
56805-1	Knitted goods & fabrics/ Articles tricotés et tissus	U.S.A.	332,710	0.04	27.5	25	n.s.	74
56821-1	Socks/Bas	Singapore	14,527	25.56	17.5	17.5	0.042	15
56830-1	Gloves, work & special purposes/ Gants de travail et pour utilisations spéciales	U.S.A.	64,202	0.0	25	25	0.0	11
56830-1	Gloves disposable/ Gants jetables	U.S.A.	64,202	2.10	25	25	0.020	95
56830-1	Gloves/Gants	U.S.A.	64,202	1.82	25	25	0.019	51
56910-1	Caps - mens & boys/ Casquettes - pour hommes et garçons	U.S.A.	6,652	5.52	25	20	0.20	22
56915-1	Hats/Chapeaux	U.S.A.	7,066	0.0	25	20	0.0	10

TABLE I (CONT.)

TABLEAU I (SUITE)

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
Tariff Item/ Numéro tarifaire	Description of Products/ Description des produits	Country/ Pays	Total Tariff Item Imports/ Total des importations sous le numéro tarifaire	Ruling Impact from Sample/ L'impact de la décision sur l'échantillon	1979 Tariff Rate/ Taux faire 1979	MTN Rate/ Taux NCM	Possible Adjustment/ Rajustement possible	Affected Imports as % of Total Imports of Commodity Class/ Importations affectées exprimées en % du total d'importations de la classe de marchandises
			- \$'000 -					
57200-1	Carpeting/Tapis	U.S.A.	47,034	0.0	20	20	0.0	75
57200-1	Carpets/Tapis	U.S.A.	47,034	0.0	20	20	0.0	55
57200-1	Carpets/Tapis	U.S.A.	47,034	0.0	20	20	0.0	98
57200-1	Carpets/Tapis	U.S.A.	47,034	0.0	20	20	0.0	75
57200-1	Matts/Paillassons (tapis)	U.S.A.	47,034	0.0	20	20	0.0	100
57200-1	Bath mats/Descente de bain	U.S.A.	47,034	0.0	20	20	0.0	100
57200-1	Carpet/Tapis	U.S.A.	47,034	0.0	20	20	0.0	75
57200-1	Carpet/Tapis	U.S.A.	47,034	no data	20	20	no data	98
57200-1	Carpeting/Tapis	U.S.A.	47,034	0.0	20	20	0.0	73
57200-1	Carpeting/Tapis	U.S.A.	47,034	3.26	20	20	0.088	96
57200-1	Carpeting/Tapis	U.S.A.	47,034	0.0	20	20	0.0	96
57200-1	Carpeting/Tapis	U.S.A.	47,034	no data	20	20	no data	96
57200-1	Carpeting/Tapis	U.S.A.	47,034	0.0	20	20	0.0	98
57200-1	Carpet/Tapis	U.S.A.	47,034	0.0	20	20	0.0	96
57200-1	Carpeting/Tapis	U.S.A.	47,034	0.68	20	20	0.033	82
57200-1	Carpet/Tapis	U.S.A.	47,034	0.0	20	20	0.0	85
58900-1	Charcoal/Charbon de bois	U.S.A.	3,434	0.61	4.00 per ton/ la tonne	Free	-	69
59730-1	Records/Disques	England	15,508	10.32	15	11.3	0.139	9
59730-1	Records/Disques	U.S.A.	15,508	no data	15	11.3	no data	64
59730-1	Record albums/Microsillons	U.S.A.	15,508	7.46	15	11.3	0.009	54

59730-1	Records/Disques	U.S.A.	15,508	0.0	15	11.3	0.0	15
59730-1	Records/Disques	U.S.A.	15,508	31.20	15	11.3	3	64
59730-1	Records/Disques	U.K.	15,508	no data	15	11.3	no data	9
61105-1	Shoes/Souliers	U.K.	224,544	0.22	20	22.5	n.s.	10
61105-1	Shoes/Souliers	U.K.	224,544	0.040	20	22.5	n.s.	13
61105-1	Footwear/Chaussures	Czech.	224,544	no data	25	22.5	no data	10
61105-1	Footwear/Chaussures	U.K.	224,544	0.0	20	22.5	0.0	74
61105-1	Boots/Bottes	U.K.	244,544	0.0	20	22.5	0.0	10
61105-1	Boots/Bottes	U.K.	244,544	5.4	20	22.5	0.001	23
61105-1	Boots/Bottes	U.K.	224,544	0.0	20	22.5	0.0	17
61105-1	Boots/Bottes	Czech.	244,544	0.0	25	22.5	0.0	100
61105-1	Footwear/Chaussures	U.S.A.	224,544	no data	25	22.5	no data	39
61105-1	Footwear/Chaussures	Czech.	224,544	no data	25	22.5	no data	82
61105-1	Shoes/Souliers	U.K.	224,544	0.18	20	22.5	n.s.	14
61105-1	Shoes/Souliers	U.K.	224,544	9.73	20	22.5	0.008	6
61105-1	Shoes/Souliers	Czech.	224,544	no data	25	22.5	no data	n.a.
61105-1	Shoes/Souliers	U.K.	224,544	0.0	20	22.5	0.0	57
61105-1	Shoes/Souliers	U.K.	224,544	no data	20	22.5	no data	24
61105-1	Shoes/Souliers	Czech.	224,544	0.0	25	22.5	0.0	2
61105-1	Shoes/Souliers	Czech.	224,544	177.6	25	22.5	0.364	23
61105-1	Shoes/Souliers	U.K.	244,544	no data	20	22.5	no data	2
61105-1	Shoes/Souliers	U.K.	224,544	0.0	20	22.5	0.0	6
61105-1	Shoes/Souliers	U.K.	224,544	0.27	20	22.5	n.s.	2
61105-1	Shoes/Souliers	U.K.	244,544	3.76	20	22.5	n.s.	2
61105-1	Footwear/Chaussures	U.S.A.	244,544	no data	25	22.5	no data	5
61105-1	Shoes/Souliers	U.K.	224,544	no data	20	22.5	no data	1
61105-1	Shoes/Souliers	U.K.	224,544	no data	20	22.5	no data	1

TABLE I (CONT.)

TABLEAU I (SUITE)

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
Tariff Item/ Numéro tarifaire	Description of Products/ Description des produits	Country/ Pays	Total Tariff Item Imports/ Total des importations sous le numéro tarifaire	Ruling Impact from Sample/ L'impact de la décision sur l'échantillon	1979 Tariff Rate/ Taux faire 1979	MTN Rate/ Taux NCM	Possible Adjustment/ Rajustement possible	Affected Imports as % of Total Imports of Commodity Class/ Importations affectées exprimées en % du total d'importations de la classe de marchandises
			- \$'000 -					
61105-1	Shoes/Souliers	U.K.	224,544	0.0	20	22.5	0.0	8
61105-1	Shoes/Souliers	U.K.	244,544	0.07	20	22.5	n.s.	1
61105-1	Shoes/Souliers	U.K.	224,544	0.0	20	22.5	0.0	1
61105-1	Shoes/Souliers	U.K.	224,544	0.0	20	22.5	0.0	11
61105-1	Footwear/Chaussures	U.K.	224,544	no data	20	22.5	no data	2
61105-1	Footwear/Chaussures	U.K.	224,544	no data	20	22.5	no data	13
61105-1	Shoes/Souliers	U.S.A.	224,544	0.0	25	22.5	0.0	45
61105-1	Shoes/Souliers	U.S.A.	224,544	0.0	25	22.5	0.0	78
61105-1	Shoes/Souliers	U.S.A.	224,544	0.0	25	22.5	0.0	39
61105-1	Shoes/Souliers	U.S.A.	224,544	0.0	25	22.5	0.0	86
61105-1	Boots/Bottes	U.S.A.	224,544	0.0	25	22.5	0.0	24
61105-1	Shoes/Souliers	U.K.	224,544	0.0	20	22.5	0.0	3
61105-1	Shoes/Souliers	U.S.A.	224,544	0.0	25	22.5	0.0	n.a.
61200-1	Animal halters/ Harnais d'animal	U.S.A.	4,425	0.0	20	11.3	0.0	68
61200-1	Saddlery/Sellerie	U.S.A.	4,425	0.0	20	11.3	0.0	57
61800-1	Pipe couplings/ Raccords de tuyaux	U.S.A.	81,369	0.42	17.5	10.2	0.003	76
61800-1	Rubber end products/ Bouts en caoutchouc	U.S.A.	81,369	4.8	17.5	10.2	0.091	78
61800-1	Synthetic crude rubber mix/ Mélange de caoutchouc brut synthétique	U.S.A.	81,369	20.96	17.5	10.2	0.111	62

61815-1	Rubber tires/ Pneus en caoutchouc	U.S.A.	274,355	10.26	17.5	10.2	0.003	93
61815-1	Rubber tires/ Pneus en caoutchouc	U.S.A.	274,355	14.32	17.5	10.2	0.039	73
61815-1	Rubber tires/ Pneus en caoutchouc	U.S.A.	274,355	10.40	17.5	10.2	0.011	59
61815-1	Rubber tires/ Pneus en caoutchouc	U.S.A.	274,355	18.50	17.5	10.2	0.851	67
61900-1	Automotive hose/ Boyau pour automobile	U.S.A.	23,382	1.41	20	11.3	0.027	45
61905-1	Components for life jackets/ Eléments de gilets de sauvetage	U.S.A.	1,309	0.0	22.5	22.5	0.0	22
62300-1	Musical instrument cases/ Boîtes d'instruments de musique	U.S.A.	65,623	16.32	20	11.3	0.031	61
62300-2	Musical instrument cases/ Boîtes d'instruments de musique	U.S.A.	1,271	4.46	20	11.3(b)	46.550	40
62410-1	Model building kits/ Troussees de modèles à construire	U.S.A.	89,211	19.2	20	12.5	0.196	69
62410-1	Toy balls/Jouets balles	U.S.A.	89,211	0.0	20	12.5	0.0	92
62410-1	Toy/Jouets	U.S.A.	89,211	1.63	20	12.5	0.101	50
62900-1	Umbrellas/Parapluies	Taiwan	3,189	1.00	20	11.3	0.013	72
62900-1	Pool patio loungers/ Chaises longues de patio	U.S.A.	3,189	1.89	20	11.3	0.030	48
64700-1	Jewellery/Bijouterie	Hong Kong	43,722	1.78	16.5	16.5	0.007	4
64700-1	Jewellery/Bijouterie	U.S.A.	43,722	2.18	25	13.2	0.225	71
64700-1	Jewellery/Bijouterie	Italy	43,722	0.09	25	13.2	0.001	56
64700-1	Jewellery/Bijouterie	France	43,722	3.32	25	13.2	0.008	2
64700-1	Jewellery/Bijouterie	U.S.A.	43,722	0.0	25	13.2	0.0	n.a.
65100-1	Plastic buttons/ Boutons en plastique	U.S.A.	4,432	0.67	20	12.6	0.020	75
65500-1	Pens/Plumes	U.S.A.	10,679	1.03	15	11.3	0.002	1

TABLE I (CONT.)

TABLEAU I (SUITE)

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
Tariff Item/Numéro tarifaire	Description of Products/Description des produits	Country/Pays	Total Tariff Item Imports/Total des importations sous le numéro tarifaire	Ruling Impact from Sample/L'impact de la décision sur l'échantillon	1979 Tariff Rate/Taux tarifaire 1979	MTN Rate/Taux NCM	Possible Adjustment/Rajustement possible	Affected Imports as % of Total Imports of Commodity Class/Importations affectées exprimées en % du total d'importations de la classe de marchandises
			- \$'000 -				%/p.c.	
65706-1	35mm film/Pellicule 35mm	U.S.A.	2,857	13.15	20	11.3	0.100	17
65810-1	Magnetic tape/Bande magnétique	U.S.A.	36,486	1.99	10	6.8	0.015	45
65810-1	Magnetic tape/Bande magnétique	U.S.A.	36,486	2.72	10	6.8	0.080	64
65810-1	Video tape blanks/Bande magnétoscopique vierge	U.S.A.	36,486	1.11	10	6.8	0.017	53
65811-1	Cassettes/Cassettes	U.S.A.	8,305	31.30	15	11.3	1.93	56
71100-1	Hobbycraft kits/Nécessaires de bricolage	U.S.A.	129,784	11.04	17.5	10.2	0.015	56
92808-1	Sulphonic acid/Acide sulfurique	U.S.A.	3,677	8.50	15	Free	0.699	50
93207-3	Polyethylene resin/Résine de polyéthylène	U.S.A.	5,015	no data	15	12.5	no data	n.a.
93210-1	Paint kits/Trousse de peinture	U.S.A.	5,015	8.85	15	10	no data	n.a.
93402-1	Surface action agents, compounded/Produits tensio-actifs composés	U.S.A.	73,706	10.24	15	12.5	0.343	71
93402-1	Surface action agents, compounded/Produits tensio-actifs composés	U.S.A.	73,706	0.0	15	12.5	0.0	98
93402-1	Surface action agents, compounded/Produits tensio-actifs composés	U.S.A.	73,706	0.0	15	12.5	0.0	41

93402-1	Household detergents/ Détersifs domestiques	U.S.A.	73,706	55.27	15	12.5	0.856	15	99
93803-1	Activated charcoal/ Charbons activés	U.S.A.	6,140	0.36	15	Free	0.032	15	85
93818-1	Stains & thinners/ Colorants et solvants	U.S.A.	2,461	0.90	15	12.5	0.096	15	13
93819-1	Rubber & plastics compounding agents/ Préparations composites caoutchouc et plastique	U.S.A.	163,257	0.0	15	12.5	0.0	15	44
93819-1	Clay/Argile	U.S.A.	163,257	0.0	15	12.5	0.0	15	4
93901-81	Plastic fabricated materials Articles à base de plastique	U.S.A.	55,138	1.77	17.5	13.5	0.004	17.5	3
93902-3	Polyethylene resin/ Résine de polyéthylène	U.S.A.	60,765	6.48	10	9.5	0.301	10	73
93902-3	Polyethylene resin/ Résine de polyéthylène	U.S.A.	60,765	0.0	10	9.5	0.0	10	53
93902-3	Polyethylene resin/ Résine de polyéthylène	U.S.A.	60,765	4.74	10	9.5	0.175	10	81
93902-42	Polyethylene resin/ Résine de polyéthylène	U.S.A.	8,501	1.04	12.5	11	0.088	12.5	15
93902-42	Polyethylene resin/ Résine de polyéthylène	U.S.A.	8,501	2.25	12.5	11	0.041	12.5	4
93902-75	Foams & expanded plastics/ Plastiques expansés	U.S.A.	40,094	2.92	15	13.5	0.031	15	76
93902-75	Foams & expanded plastic/ Plastiques expansés	U.S.A.	40,094	3.96	15	13.5	0.006	15	50
93902-81	Plastic fabricated materials/ Articles à base de plastique	U.S.A.	66,819	0.0	17.5	13.5	0.0	17.5	4
93902-82	Polyethylene sheet and film/ Feuille et pellicule de polyéthylène	U.S.A.	18,536	0.0	17.5	13.5	0.0	17.5	84
93902-82	Polyethylene sheet and film/ Feuille et pellicule de polyéthylène	U.S.A.	18,536	10.31	17.5	13.5	0.069	17.5	96

TABLE I (CONCL.2)

TABLEAU I (FIN)

(1)	(2)	(3)	(4)	(5)	TABLEAU I (FIN)			(9)
					(6)	(7)	(8)	
Tariff Item/Numéro tarifaire	Description of Products/Description des produits	Country/Pays	Total Tariff Item Imports/Total des importations sous le numéro tarifaire	Ruling Impact from Sample/L'impact de la décision sur l'échantillon	1979 Tariff Rate/Taux tarifaire 1979	MTN Rate/Taux NCM	Possible Adjustment/Rajustement possible	Affected Imports as % of Total Imports/Importations affectées exprimées en % du total d'importations de la classe de marchandises
			- \$'000 -					
93902-82	Polyethylene sheet and film/Feuille et pellicule de polyéthylène	U.S.A.	18,536	4.46	17.5	13.5	0.141	64
93902-82	Plastic end products/Bouts en plastique	U.S.A.	18,536	12.11	17.5	13.5	0.024	n.a.
93907-1	Plastic fabricated materials/Articles à base de plastique	U.S.A.	303,951	2.31	17.5	13.5	0.021	63
93907-1	Shelving & lockers/Etagères et armoires	U.S.A.	303,951	0.0	17.5	13.5	0.0	1
93907-1	Air conditioning & refrigeration equipment/Matériel de climatisation et de réfrigération	U.S.A.	303,951	no data	17.5	13.5	no data	6
93907-1	Swimming pools/Piscines	U.S.A.	303,951	0.0	17.5	13.5	0.0	3
93907-1	Swimming pools/Piscines	U.S.A.	303,951	0.0	17.5	13.5	0.0	96
93907-1	Sporting & recreation equip/Equipement de sport et de récréation	U.S.A.	303,951	14.48	17.5	13.5	0.001	13
93907-1	Swimming pools/Piscines	U.S.A.	303,951	8.28	17.5	13.5	0.006	48
93907-1	Shipping and distribution container/Contenant d'expédition et de distribution	U.S.A.	303,951	1.94	17.5	13.5	0.009	86
93907-1	Shipping & distribution container/Contenant d'expédition et de distribution	U.S.A.	303,951	3.14	17.5	13.5	0.003	84

93907-1	Plastic bottles or vials/ Bouteilles et fioles de plastique	U.S.A.	303,951	1.69	17.5	13.5	0.005	91
93907-1	Bottle caps/ Bouchons de bouteilles	U.S.A.	303,951	2.27	17.5	13.5	0.010	90
93907-1	Office supplies/ Fournitures de bureau	U.S.A.	303,951	7.96	17.5	13.5	0.004	14
93907-1	Loose-leaf binders/ Reliures à feuilles mobiles	U.S.A.	303,951	0.34	17.5	13.5	n.s.	27
93907-1	Office supplies/ Fournitures de bureau	U.S.A.	303,951	no data	17.5	13.5	no data	1
93907-1	Swimming pools/Piscines	U.S.A.	303,951	no data	17.5	13.5	no data	10
93907-1	Plastic end products/ Bouts en plastiques	U.S.A.	303,951	3.42	17.5	13.5	0.105	75
93907-1	Plastic tableware/ Articles de table en plastique	U.S.A.	303,951	0.0	17.5	13.5	0.0	93
93907-1	Plastic tableware/ Articles de table en plastique	U.S.A.	303,951	5.21	17.5	13.5	0.016	88
93907-1	Household & personal equip/ Effets personnels et domestiques	U.S.A.	303,951	0.49	17.5	13.5	0.001	61
93907-1	Ophthalmic goods/ Produits ophtalmiques	U.S.A.	303,951	0.0	17.5	13.5	0.0	2

FOOTNOTES

NOTES EN BAS DE PAGE

n.s. not significant, i.e. figure < 0.005%
n.a. not applicable, i.e. figure < 1%

n.s. sans importance, c.-à-d. chiffre < 0.005 p.c.
n.a. non applicable, c.-à-d. chiffre < 1 p.c.

(a) 10 cents per pound but not less than 25 p.c.
(b) MTN rate applied is that of parent item 62300-1, as product
reverted back to parent item on June 3, 1980.

a) 10 cents la livre mais pas moins de 25 p.c.
b) Taux NCM appliqué est celui du numéro tarifaire d'origine
62300-1, vu que le produit est retourné au numéro tarifaire
d'origine le 3 juin 1980.

TABLE II

VALUE FOR DUTY RULINGS ENFORCED BY MINISTERIAL
PRESCRIPTIONS AS OF APRIL 1, 1979

TABLEAU II

DÉCISIONS SUR LA VALEUR EN DOUANE APPLIQUÉES PAR PRESCRIPTIONS
MINISTÉRIELLES À COMPTER DU 1er AVRIL 1979

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
Tariff Item/ Numéro tarifaire	Product Description (Prescription Number)/ Description des produits (Numéro de prescription)	Country/ Pays	Total Tariff Item Imports/ Total des importations sous le numéro tarifaire	Impact of Prescription/ L'impact de la décision sur l'échantillon	1979 Tariff Rate/ Taux tari- faire	MTN Rate/ Taux NCM	Possible Adjustment/ Rajustement possible	Affected Imports as % of Total Imports of Commodity Class/ Importations affectées exprimées en % du total d'importations de la classe de marchandises
			- \$'000 -					
52305-1	Outerwear/ Vêtements de dessus (220)	S. Korea	140,482	15	22.5	22.5	0.002	56
52305-1	Pants/Pantalons (220)	S. Korea	140,482	15	22.5	22.5	0.003	20
52305-1	Pants/Pantalons (103)	Hong Kong	140,482	33.3	22.5	22.5	0.007	87
52305-1	Pants/Pantalons (220)	S. Korea	140,482	15	22.5	22.5	0.001	3
52305-1	Pants/Pantalons (103)	Hong Kong	140,482	33.3	22.5	22.5	0.442	37
52305-1	Suits/Complets (220)	S. Korea	140,482	15	22.5	22.5	0.005	15
52305-1	Pants/Pantalons (103)	Hong Kong	140,482	33.3	22.5	22.5	0.074	53
52305-1	Cotton shirts/ Chemises de coton (103)	Hong Kong	140,482	33.3	22.5	22.5	0.093	36
52305-1	Cotton shirts/ Chemises de coton (103)	Hong Kong	140,482	33.3	22.5	22.5	0.004	3
52305-1	Raincoats/Imperméables (220)	S. Korea	140,482	15	22.5	22.5	0.001	26
52305-1	Outdoor jackets/ Vestons d'extérieur (103)	Hong Kong	140,482	33.3	22.5	22.5	0.003	90
52305-1	Outdoor jackets/ Vestons d'extérieur (103)	Hong Kong	140,482	33.3	22.5	22.5	0.018	39
52305-1	Outdoor jackets/ Vestons d'extérieur (103)	Hong Kong	140,482	33.3	22.5	22.5	0.021	14
53305-1	Shirts/Chemises (103)	Hong Kong	37,919	33.3	25	25	0.004	4

53305-1	Outdoor jackets/ Vestons d'extérieur (103)	Hong Kong	37,919	33.3	25	25	0.026	20
53305-1	Outdoor jackets/ Vestons d'extérieur (103)	Hong Kong	37,919	33.3	25	25	0.009	7
54305-1	Shirts/Chemises (103)	Hong Kong	26,380	33.3	22.5	22.5	0.012	n.a.
54305-1	Raincoats/Imperméables (103)	Hong Kong	26,380	33.3	22.5	22.5	0.020	5
54305-1	Outdoor jackets/ Vestons d'extérieur (103)	Hong Kong	26,380	33.3	22.5	22.5	0.005	2
55305-1	Shirts/Chemises (103)	Hong Kong	8,012	33.3	25	20	0.121	46
56300-1	Outerwear/ Vêtements de dessus (220)	S. Korea	251,589	15	25	25	0.012	57
56300-1	Outerwear/ Vêtements de dessus (220)	S. Korea	251,589	15	25	25	0.036	52
56300-1	Outerwear/ Vêtements de dessus (220)	S. Korea	251,589	15	25	25	0.002	51
56300-1	Outerwear/ Vêtements de dessus (220)	S. Korea	251,589	15	25	25	0.031	51
56300-1	Outerwear/ Vêtements de dessus (220)	S. Korea	251,589	15	25	25	0.001	19
56300-1	Outerwear/ Vêtements de dessus (220)	S. Korea	251,589	15	25	25	0.014	68
56300-1	Outerwear/ Vêtements de dessus (220)	S. Korea	251,589	15	25	25	0.006	45
56300-1	Outerwear/ Vêtements de dessus (220)	S. Korea	251,589	15	25	25	0.001	37
56300-1	Outerwear/ Vêtements de dessus (220)	S. Korea	251,589	15	25	25	0.013	71
56300-1	Outerwear/ Vêtements de dessus (220)	S. Korea	251,589	15	25	25	0.003	65
56300-1	Shirts/Chemises (103)	Hong Kong	251,589	33.3	25	25	n.s.	3
56300-1	Shirts/Chemises (103)	Hong Kong	251,589	33.3	25	25	0.011	56
56300-1	Shirts/Chemises (103)	Hong Kong	251,589	33.3	25	25	0.003	52
56300-1	Shirts/Chemises (103)	Hong Kong	251,589	33.3	25	25	0.002	18

TABLE II (CONT.)

TABLEAU II (SUITE)

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
Tariff Item/ Numéro	Product Description (Prescription Number)/ Description des produits (Numéro de prescription)	Country/ Pays	Total Tariff Item Imports/ Total des importations sous le numéro tarifaire	Impact of Prescription/ L'impact de la décision sur l'échantillon	1979 Tariff Rate/ Taux tari- faire	MTN Rate/ Taux NCM	Possible Adjustment/ Rajustement possible	Affected Imports as % of Total Imports of Commodity Class/ Importations affectées exprimées en % du total d'importations de la classe de marchandises
			- \$'000 -					
56300-1	Shirts/Chemises (103)	Hong Kong	251,589	33.3	25	25	0.134	26
56300-1	Shirts/Chemises (103)	Hong Kong	251,589	33.3	25	25	0.002	18
56300-1	Raincoats/Imperméables (299)	Taiwan	251,589	25	25	25	0.001	36
56300-1	Raincoats/Imperméables (220)	S. Korea	251,589	15	25	25	0.001	61
56300-1	Raincoats/Imperméables (220)	S. Korea	251,589	15	25	25	0.002	83
56300-1	Raincoats/Imperméables (220)	S. Korea	251,589	15	25	25	0.005	23
56300-1	Raincoats/Imperméables (299)	Taiwan	251,589	25	25	25	0.003	7
56300-1	Raincoats/Imperméables (103)	Hong Kong	251,589	33.3	25	25	0.003	34
56300-1	Raincoats/Imperméables (220)	S. Korea	251,589	15	25	25	0.002	79
56300-1	Raincoats/Imperméables (220)	S. Korea	251,589	15	25	25	0.003	49
56300-1	Raincoats/Imperméables (299)	Taiwan	251,589	25	25	25	0.004	34
56300-1	Raincoats/Imperméables (299)	Taiwan	251,589	25	25	25	0.003	17
56300-1	Raincoats/Imperméables (220)	S. Korea	251,589	15	25	25	0.003	58
56300-1	Coats/Manteaux (220)	S. Korea	251,589	15	25	25	0.004	18
56300-1	Coats/Manteaux (220)	S. Korea	251,589	15	25	25	0.001	10

56300-1	Outdoor jackets/ Vestons d'extérieur (103)	Hong Kong	251,589	33.3	25	25	0.001	10
56300-1	Woven outdoor nylon jackets/ Vestons d'extérieur tissés en nylon (299)	Taiwan	251,589	25	25	25	0.001	8
56300-1	Outdoor jackets/ Vestons d'extérieur (220)	S. Korea	251,589	15	25	25	n.s.	37
56300-1	Outdoor jackets/ Vestons d'extérieur (103)	Hong Kong	251,589	33.3	25	25	0.003	14
56300-1	Outdoor jackets/ Vestons d'extérieur (103)	Hong Kong	251,589	33.3	25	25	0.002	11
56300-1	Outdoor jackets/ Vestons d'extérieur (103)	Hong Kong	251,589	33.3	25	25	n.s.	23
56300-1	Womens woven nylon outdoor jackets/ Vestons d'extérieur (299)	Taiwan	251,589	25	25	25	0.002	13
56300-1	Outdoor jackets/ Vestons d'extérieur (103)	Hong Kong	251,589	33.3	25	25	0.004	16
56300-1	Outdoor jackets/ Vestons d'extérieur (220)	S. Korea	251,589	15	25	25	0.001	49
56300-1	Outdoor jackets/ Vestons d'extérieur (103)	Hong Kong	251,589	33.3	25	25	0.001	15
56300-1	Outdoor jackets/ Vestons d'extérieur (220)	S. Korea	251,589	15	25	25	0.011	74
56300-1	Outdoor jackets/ Vestons d'extérieur (103)	Hong Kong	251,589	33.3	25	25	0.005	16
56300-1	Boys outdoor jackets/ Vestons d'extérieur (299)	Taiwan	251,589	25	25	25	0.001	9
56300-1	Woven nylon outdoor boy's jackets/ Vestons d'extérieur pour garçon en nylon tissé (299)	Taiwan	251,589	25	25	25	0.003	12
56300-1	Mens outdoor jackets/ Vestons d'extérieur pour homme (299)	Taiwan	251,589	25	25	25	0.003	10
56300-1	Outdoor jackets/ Vestons d'extérieur	Hong Kong	251,589	33.3	25	25	0.004	5

TABLE II (CONT.)

TABLEAU II (SUITE)

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
Tariff Item/Numéro tarifaire	Product Description (Prescription Number)/Description des produits (Numéro de prescription)	Country/Pays	Total Tariff Item Imports/Total des importations sous le numéro tarifaire	Impact of Prescription/L'impact de la décision sur l'échantillon	1979 Tariff Rate/Taux tarifaire	MTN Rate/Taux NCM	Possible Adjustment/Rajustement possible	Affected Imports as % of Total Imports of Commodity Class/Importations affectées exprimées en % du total d'importations de la classe de marchandises
			- \$'000 -				----- %/p.c. -----	
56300-1	Woven outdoor men's nylon jackets/ Vestons d'extérieur pour homme en nylon tissé (299)	Taiwan	251,589	25	25	25	0.009	14
56300-1	Outdoor jackets/ Vestons d'extérieur (103)	Hong Kong	251,589	33.3	25	25	0.006	6
56300-1	Outdoor jackets/ Vestons d'extérieur (103)	Hong Kong	251,589	33.3	25	25	n.s.	70
56805-1	Outerwear/ Vêtements de dessus (220)	S. Korea	332,710	15	27.5	25	0.033	29
56805-1	Outerwear/ Vêtements de dessus (220)	S. Korea	332,710	15	27.5	25	0.005	18
56805-1	T-Shirts/ Chandails (tee-shirt) (299)	Taiwan	332,710	25	27.5	25	0.033	30
56805-1	T-Shirts/ Chandails (tee-shirt) (299)	Taiwan	332,710	25	27.5	25	0.005	64
56805-1	Mens knit nylon T-shirts/ Chandails (tee-shirt) en nylon tricoté (299)	Taiwan	332,710	25	27.5	25	0.001	60
56805-1	Outerwear/ Vêtements de dessus (103)	Hong Kong	332,710	33.3	27.5	25	0.001	17
56805-1	Shirts/Chemises (103)	Hong Kong	332,710	33.3	27.5	25	0.006	27
56805-1	Shirts/Chemises (103)	Hong Kong	332,710	33.3	27.5	25	0.031	34
56805-1	Shirts/Chemises (220)	S. Korea	332,710	15	27.5	25	0.005	12
56805-1	Shirts/Chemises (103)	Hong Kong	332,710	33.3	27.5	25	0.001	5
56805-1	Shirts/Chemises (103)	Hong Kong	332,710	33.3	27.5	25	0.214	57

56805-1	T-Shirts/ Chandails (tee-shirt) (220)	S. Korea	332,710	15	27.5	25	0.001	n.a.
56805-1	T-Shirts/ Chandails (tee-shirt) (103)	Hong Kong	332,710	33.3	27.5	25	0.181	81
56805-1	Shorts/Short (103)	Hong Kong	332,710	33.3	27.5	25	0.002	40
56805-1	Shorts/Short (103)	Hong Kong	332,710	33.3	27.5	25	0.001	14
56805-1	Shorts/Short (103)	Hong Kong	332,710	33.3	27.5	25	0.001	11
56805-1	Shorts/Short (103)	Hong Kong	332,710	33.3	27.5	25	0.001	76
56805-1	Shorts/Short (103)	Hong Kong	332,710	33.3	27.5	25	0.001	47
56805-1	Sweaters/Chandails (103)	Hong Kong	332,710	33.3	27.5	25	0.002	19
56805-1	Sweaters/Chandails (220)	S. Korea	332,710	15	27.5	25	0.001	14
56805-1	Sweaters/Chandails (103)	Hong Kong	332,710	33.3	27.5	25	0.002	55
56805-1	Sweaters/Chandails (103)	Hong Kong	332,710	33.3	27.5	25	0.034	30
56805-1	Sweaters/Chandails (220)	S. Korea	332,710	15	27.5	25	0.005	10
56805-1	Sweaters/Chandails (103)	Hong Kong	332,710	33.3	27.5	25	0.012	21
56805-1	Sweaters/Chandails (220)	S. Korea	332,710	15	27.5	25	0.001	3
56805-1	Sweaters/Chandails (103)	Hong Kong	332,710	33.3	27.5	25	0.025	66
56805-1	Sweaters/Chandails (220)	S. Korea	332,710	15	27.5	25	0.012	54
56805-1	Sweaters/Chandails (103)	Hong Kong	332,710	33.3	27.5	25	0.007	15
56805-1	Sweaters/Chandails (103)	Hong Kong	332,710	33.3	27.5	25	0.013	67
56805-1	Sweaters/Chandails (103)	Hong Kong	332,710	33.3	27.5	25	0.012	59
56805-1	Sweaters/Chandails (220)	S. Korea	332,710	15	27.5	25	0.001	54
56805-1	Sweaters/Chandails (103)	Hong Kong	332,710	33.3	27.5	25	0.006	21
56805-1	Sweaters/Chandails (220)	S. Korea	332,710	15	27.5	25	0.003	19
56805-1	Sweaters/Chandails (103)	Hong Kong	332,710	33.3	27.5	25	0.002	55
56805-1	Sweaters/Chandails (103)	Hong Kong	332,710	33.3	27.5	25	0.015	26
56805-1	Sweaters/Chandails (103)	Hong Kong	332,710	15	27.5	25	0.001	4
56805-1	Sweaters/Chandails (103)	Hong Kong	332,710	33.3	27.5	25	n.s.	3

TABLE II (CONT.)

TABLEAU II (SUITE)

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
Tariff Item/ Numéro tarifaire	Product Description (Prescription Number)/ Description des produits (Numéro de prescription)	Country/ Pays	Total Tariff Item Imports/ Total des importations sous le numéro tarifaire	Impact of Prescription/ L'impact de la décision sur l'échantillon	1979 Tariff Rate/ Taux tari- faire	MTN Rate/ Taux NCM	Possible Adjustment/ Rajustement possible	Affected Imports as % of Total Imports of Commodity Class/ Importations affectées exprimées en % du total d'importations de la classe de marchandises
			- \$'000 -				%/p.c.	
56805-1	Sweaters/Chandails (103)	Hong Kong	332,710	33.3	27.5	25	0.001	34
56805-1	Sweaters/Chandails (220)	S. Korea	332,710	15	27.5	25	0.001	30
56805-1	Sweaters/Chandails (220)	S. Korea	332,710	15	27.5	25	n.s.	65
56805-1	Sweaters/Chandails (299)	Taiwan	332,710	25	27.5	25	0.042	54
56805-1	Sweaters/Chandails (220)	S. Korea	332,710	15	27.5	25	0.006	13
56805-1	Sweaters/Chandails (299)	Taiwan	332,710	25	27.5	25	0.028	39
56805-1	Sweaters/Chandails (220)	S. Korea	332,710	15	27.5	25	0.013	30
56805-1	Sweaters/Chandails (220)	S. Korea	332,710	15	27.5	25	0.095	35
56805-1	Sweaters/Chandails (299)	Taiwan	332,710	25	27.5	25	0.184	40
56805-1	Sweaters/Chandails (299)	Taiwan	332,710	25	27.5	25	0.024	45
56805-1	Sweaters/Chandails (220)	S. Korea	332,710	15	27.5	25	0.008	24
56805-1	Sweaters/Chandails (299)	Taiwan	332,710	25	27.5	25	0.089	42
56805-1	Sweaters/Chandails (220)	S. Korea	332,710	15	27.5	25	0.042	33
56805-1	Sweaters/Chandails (220)	S. Korea	332,710	15	27.5	25	n.s.	3
56805-1	Sweaters/Chandails (220)	S. Korea	332,710	15	27.5	25	0.009	4
56805-1	Sweaters/Chandails (220)	S. Korea	332,710	15	27.5	25	0.001	56
56805-1	Sweaters/Chandails (220)	S. Korea	332,710	15	27.5	25	0.023	15
56805-1	Blouses/Blouses (220)	S. Korea	332,710	15	27.5	25	0.007	4
61105-1	Footwear/Chaussures (219)	S. Korea	224,544	10	25	22.5	0.001	11
61105-1	Footwear/Chaussures (289)	Spain	224,544	5	25	22.5	n.s.	7
61105-1	Footwear/Chaussures (241)	Italy	224,544	15	25	22.5	n.s.	2

61105-1	Footwear/Chaussures (217)	Taiwan	224,544	20	25	22.5	0.004	17
61105-1	Footwear/Chaussures (217)	Taiwan	224,544	20	25	22.5	0.004	58
61105-1	Footwear/Chaussures (217)	Taiwan	224,544	20	25	22.5	0.002	9
61105-1	Footwear/Chaussures (217)	Taiwan	224,544	20	25	22.5	0.001	18
61105-1	Wooden footwear/Sabots (217)	Taiwan	224,544	20	25	22.5	0.008	27
61105-1	Wooden footwear/Sabots (217)	Taiwan	224,544	20	25	22.5	0.003	3
61105-1	Athletic footwear/Chaussures de sport (217)	Taiwan	224,544	20	25	22.5	0.011	43
61105-1	Footwear/Chaussures (217)	Taiwan	224,544	20	25	22.5	n.s.	n.a.
61105-1	Slippers/Pantoufles (217)	Taiwan	224,544	20	25	22.5	0.005	70
61105-1	Sandals/Sandales (217)	Taiwan	224,544	20	25	22.5	0.001	52
61105-1	Sandals/Sandales (217)	Taiwan	224,544	20	25	22.5	0.004	64
61105-1	Sandals/Sandales (217)	Taiwan	224,544	20	25	22.5	0.001	30
61105-1	Sandals/Sandales (217)	Taiwan	224,544	20	25	22.5	0.004	65
61105-1	Sandals/Sandales (217)	Taiwan	224,544	20	25	22.5	0.011	89
61105-1	Sandals/Sandales (217)	Taiwan	224,544	20	25	22.5	0.004	59
61105-1	Sandals/Sandales (217)	Taiwan	224,544	20	25	22.5	0.005	49
61105-1	Sandals/Sandales (217)	Taiwan	224,544	20	25	22.5	0.002	10
61105-1	Sandals/Sandales (217)	Taiwan	224,544	20	25	22.5	0.087	61
61105-1	Sandals/Sandales (217)	Taiwan	224,544	20	25	22.5	0.006	26
61105-1	Sandals/Sandales (289)	Spain	224,544	5	25	22.5	0.001	5
61105-1	Sandals/Sandales (217)	Taiwan	224,544	20	25	22.5	0.002	3
61105-1	Sandals/Sandales (189)	Italy	224,544	6	25	22.5	0.005	63
61105-1	Sandals/Sandales (217)	Taiwan	224,544	20	25	22.5	0.003	41
61105-1	Sandals/Sandales (241)	Italy	224,544	15	25	22.5	n.s.	59
61105-1	Shoes/Souliers (217)	Taiwan	224,544	20	25	22.5	0.006	22
61105-1	Shoes/Souliers (217)	Taiwan	224,544	20	25	22.5	0.007	47

TABLE II (CONCL.)

TABLEAU II (FIN)

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
Tariff Item/ Numéro tarifaire	Product Description (Prescription Number)/ Description des produits (Numéro de prescription)	Country/ Pays	Total Tariff Item Imports/ Total des importations sous le numéro tarifaire	Impact of Prescription/ L'impact de la décision sur l'échantillon	1979 Tariff Rate/ Taux tari- faire	MTN Rate/ Taux NCM	Possible Adjustment/ Rajustement possible	Affected Imports as % of Total Imports of Commodity Class/ Importations affectées exprimées en % du total d'importations de la classe de marchandises
			- \$'000 -					
61105-1	Shoes/Souliers (217)	Taiwan	224,544	20	25	22.5	0.001	3
61105-1	Shoes/Souliers (217)	Taiwan	224,544	20	25	22.5	n.s.	1
61105-1	Shoes/Souliers (217)	Taiwan	224,544	20	25	22.5	0.008	58
61105-1	Shoes/Souliers (217)	Taiwan	224,544	20	25	22.5	0.028	27
61105-1	Shoes/Souliers (217)	Taiwan	224,544	20	25	22.5	0.002	12
61105-1	Shoes/Souliers (217)	Taiwan	224,544	20	25	22.5	0.007	84
61105-1	Shoes/Souliers (217)	Taiwan	224,544	20	25	22.5	0.045	53
61105-1	Shoes/Souliers (217)	Taiwan	224,544	20	25	22.5	0.001	17
61105-1	Shoes/Souliers (217)	Taiwan	224,544	20	25	22.5	0.004	44
61105-1	Shoes/Souliers (289)	Spain	224,544	5	25	22.5	0.001	6
61105-1	Shoes/Souliers (217)	Taiwan	224,544	20	25	22.5	0.007	17
61105-1	Shoes/Souliers (289)	Spain	224,544	5	25	22.5	n.s.	9
61105-1	Shoes/Souliers (217)	Taiwan	224,544	20	25	22.5	0.008	41
61105-1	Shoes/Souliers (289)	Spain	224,544	5	25	22.5	n.s.	14
61105-1	Shoes/Souliers (289)	Spain	224,544	5	25	22.5	n.s.	43
61105-1	Shoes/Souliers (217)	Taiwan	224,544	20	25	22.5	0.002	86
61105-1	Shoes/Souliers (289)	Spain	224,544	5	25	22.5	0.002	7
61105-1	Shoes/Souliers (289)	Spain	224,544	5	25	22.5	0.001	50
61105-1	Shoes/Souliers (289)	Spain	224,544	5	25	22.5	0.006	8
61105-1	Shoes/Souliers (217)	Taiwan	224,544	20	25	22.5	0.007	2
61105-1	Shoes/Souliers (289)	Spain	224,544	5	25	22.5	0.001	8

61105-1	Shoes/Souliers (289)	Spain	224,544	5	25	22.5	0.003	7
61105-1	Shoes/Souliers (289)	Spain	224,544	5	25	22.5	0.002	42
61105-1	Shoes/Souliers (219)	S. Korea	224,544	10	25	22.5	0.002	93
61120-1	Outdoor jackets/ Vestons d'extérieur (103)	Hong Kong	3,898	33.3	22.5	22.5	0.075	12
61120-1	Outdoor jackets/ Vestons d'extérieur (103)	Hong Kong	3,898	33.3	22.5	22.5	0.096	9
61905-1	Raincoats/Imperméables (220)	S. Korea	1,309	15	22.5	22.5	0.292	40
93907-1	Raincoats/Imperméables (299)	Taiwan	303,951	25	17.5	13.5	0.004	74
93907-1	Raincoats/Imperméables (103)	Hong Kong	303,951	33.3	17.5	13.5	0.001	26
93907-1	Raincoats/Imperméables (103)	Hong Kong	303,951	33.3	17.5	13.5	n.s.	2
93907-1	Raincoats/Imperméables (220)	S. Korea	303,951	15	17.5	13.5	0.001	16

FOOTNOTES

NOTES EN BAS DE PAGE

n.s. not significant, i.e., figure < 0.005%
n.a. not applicable, i.e., figure < 1%

n.s. sans importance, c.-à-d. chiffre < 0.005 p.c.
n.a. non applicable, c.-à-d. chiffre < 1 p.c.

TABLE III

MINISTERIAL DETERMINATIONS ISSUED UNDER THE
AUTHORITY OF SECTIONS 39(a), (d) OR 40 OF THE
CUSTOMS ACT, OR WHERE THE AUTHORITY IS NOT CLEAR,
AND WHICH WERE IN EFFECT ON APRIL 1, 1979

TABLEAU III

PRESCRIPTIONS MINISTÉRIELLES ÉMISES EN VERTU DES
ARTICLES 39 a), d) OU 40 DE LA LOI SUR LES DOUANES,
OU SANS MENTION DE L'ARTICLE DE LA LOI, LESQUELLES
ÉTAIENT EN VIGUEUR LE 1er AVRIL 1979

(1)	(2)	(3)	(4)	(5)	(6)	(7)
	Description of Goods and Country/ Description des produits et pays	Ruling/Décision	Tariff Item(s) Commonly Applied/ Numéros tarifaires généralement appliqués	Rates of Duty (b) Taux de droit 1978 1987	Value of Imports/ Valeur des importations Total/ Country/ Total Pays	Affected Imports as % of Total/ Importations affectées en % du total
#(a)				- %/p.c. -	- \$'000 -	- %/p.c. -
A. MINISTERIAL DETERMINATIONS UNDER SECTION 39(a)/PRESCRIPTIONS MINISTÉRIELLES EN VERTU DE L'ARTICLE 39 a)						
22	Steel strapping tools Outils de cerclage d'acier	VFD = Advance of 25% or 50% V en D = Inclure une majo- ration de 25 p.c. ou 50 p.c.	42700-1	15 9-2	2,911,266	-
63(f)	Cotton fabrics (China) Tissus de coton (Chine)	VFD = Value of comparable goods from Japan V en D = Valeur des produits semblables du Japon	52201-1 52202-1 52203-1 52204-1 52205-1 52207-1 52220-1 54205-1	17.5 15 20 17.5 20 17.5 20 Free 20 15 Free Free Free Free 20 17.5	21,356 3,622 9,846 808 94,490 3,881 212 - 13,276 4,063 6,704 - 14,083 - 2,181 -	16.96 8.21 4.11 - 30.60 - - -
72(f)	Wool worsted fabrics (China) Tissus de laine peignée (Chine)	VFD = Value of comparable goods from Japan V en D = Valeur des produits semblables du Japon	53205-1 53210-1 53215-1	25 25 25	22,173 31 8,811 9 35,979 679	.14 .10 1.89
76(e)	Plastic raincoats with hats Imperméables avec chapeaux en plastique	VFD = A specific value per dozen V en D = Valeur précise par douzaine	93907-1	17.5 13.5	303,951	-
82(g)	Workgloves (China) Gants de travail (Chine)	VFD = Value of similar Hong Kong gloves V en D = Valeur des gants semblables à Hong Kong	56830-1	25 25	64,202 6,647	10.35

84(f)	Steel reinforcing bars and wire rods (Czechoslovakia) Barres d'armature en acier et tiges (Tchécoslovaquie)	VFD = Value of similar West German goods V en D = Valeur des produits semblables de l'Allemagne de l'Ouest	37900-1 37905-1 37910-1	10 12.5 12.5	7.8 10 10	57,430 10,144 9,286	440 - -	.77 - -
102(h)	Transparent sheet glass (Czechoslovakia, Poland, East Germany, U.S.S.R., Romania) Verre à vitre transparente (Tchécoslovaquie, Pologne, République fédérale d'Allemagne, U.R.S.S., Roumanie)	VFD = Value of comparable glass of Belgian origin V en D = Valeur du verre comparable en provenance de la Belgique	31800-1	7.5	5.5	2,766	38	1.4
167(f)	Apple juice concentrate (Bulgaria, Hungary) Jus de pommes concentré (Bulgarie, Hongrie)	VFD = Value of comparable concentrate of Austrian origin V en D = La valeur du jus concentré semblable d'origine Autrichienne	15208-1	10	10	13,790	85	.62
181(h)	Transparent sheet glass (Hungary) Verre à vitre transparente (Hongrie)	VFD = Comparable glass of Belgian origin V en D = Valeur du verre comparable en provenance de la Belgique	31800-1 31900-1 32100-1	7.5 5 7.5	5.5 4 6.8	2,766 57,811 11,971	849 - 181	30.7 - 1.5
186(f)	Knitted acrylic sweaters and pullovers (Italy) Chandails acryliques tricotés (Italie)	VFD = Cost of production plus 20% V en D = Le coût de production majoré de 20 p.c.	56805-1	27.5	25	332,710	13,748	4.13
188(i)	Women's footwear (Italy) Chaussures pour dames (Italie)	VFD = Cost of production advanced by 23% V en D = Coût de production majoré de 23 p.c.	61100-1 61105-1 61110-1 61115-1	22.5 25 25 20	22.5 22.5 20 20	814 224,544 19,719 67	184 62,378 404 15	22.6 27.8 2.0 22.4
206(f)	Colour television receiving sets (Japan) Téléviseurs couleurs (Japon)	VFD = Domestic sales of other Japanese vendors of like or similar goods V en D = La vente intérieure des produits semblables du Japon	44533-1 44534-1	15 15	9.2 Free	659,837 7,594	183,083 2,199	27.75 28.84
*210(f)	Leather ski gloves (Japan) Gants de ski en cuir (Japon)	VFD = Sales by another vendor V en D = Les ventes d'un autre vendeur	56830-1	25	25	64,202	1,391	2.17

TABLE III (CONT.) (3) (2) (1)

TABLEAU III (SUITE)

#(a)	Description of Goods and Country/ Description des produits et pays	Ruling/Décision	Tariff Item(s) Commonly Applied/ Numéros tarifaires généralement appliqués	Rates of Duty (b)		Value of Imports/ Valeur des importations		Affected Imports as % of Total/ Importations affectées en % du total		
				Taux de droit		1978				
				1987		Country/ Pays				
				-		-				
				gross	gross			-\$'000	-	-%/p.c. -
212(f)	Wooden clothespins (Romania)	VFD = Value of comparable clothespins of Danish origin	50605-1	20 1/2	12 1/2	393	247			62.85
	Pinces à linge en bois (Roumanie)	V en D = Valeur de pinces à linge comparables du Danemark								
*239(f)	Wearing apparel (Puerto Rico)	VFD = Selling price of similar goods by another vendor	52305-1	22.5	22.5	140,482	1,618			1.13
			53305-1	25	25	37,919	-			-
	Vêtements (Porto Rico)	V en D = Le prix de mar- chandises semblables d'un autre vendeur	54305-1	22.5	22.5	26,380	1,443			5.47
			56300-1	25	25	251,589	194			.08
			56805-1	27.5	25	332,710	6			-
			56830-1	25	25	64,202	-			-
			56905-1	20	20	754	-			-
			56910-1	25	20	6,652	-			-
			56940-1	Free	Free	3,953	-			-
			61120-1	22.5	22.5	3,898	-			-
			61800-1	17.5	10.2	81,369	55			.07
			93907-1	17.5	13.5	303,951	512			.17
*240(f)	Wearing apparel (U.S.)	VFD = Selling price of similar goods by another vendor	52305-1	22.5	22.5	140,482	19,283			13.73
			53305-1	25	25	37,919	3,312			8.73
	Vêtements (des Etats-Unis)	V en D = Le prix de mar- chandises semblables d'un autre vendeur	54305-1	22.5	22.5	26,380	16,301			61.79
			56300-1	25	25	217,589	89,322			41.0
			56805-1	27.5	25	332,710	67,403			20.26
			56830-1	25	25	64,202	8,040			12.52
			56905-1	20	20	754	423			56.10
			56910-1	25	20	6,652	1,686			25.35
			56940-1	Free	Free	3,953	3,830			96.89
			61120-1	22.5	22.5	3,898	182			4.67
			61800-1	17.5	10.2	81,369	62,041			76.25
			93907-1	17.5	13.5	303,951	241,146			79.34
258(f)	Stereo equipment (Japan)	VFD = Domestic sales of other vendors	44533-1	15	9.2	659,837	183,083			27.75
			44533-2(p)	15	Free	-	-			-

270(m)	Equipement stéréophonique (Japon)	V en D = Des ventes nationales d'effets pareils	44534-1 44535-1 44536-1 44538-1 44540-1 93907-1 95002-1	15 15 7.5 12.5 15 17.5 Free	Free Free 5.5 8 9.2 13.5 Free	7,594 5,271 49,780 113,675 98,431 303,951 5,233,465	2,190 522 29,173 57,293 36,648 5,778 8,199	28.84 9.90 59.61 50.40 37.23 1.90 .16
	Bicycles (Czechoslovakia, Hungary, Poland) Bicyclettes (Pologne, Hongrie & Tchecoslovaquie)	VFD = Value of similar bikes of U.S. origin V en D = La valeur des bicyclettes semblables originaires des Etats- Unis	43900-1	25	13.2	21,220	6,475	30.51
284	Printed or lithographed matter of paper Papier imprimé ou lithographié	VFD = Includes advances of 15% to 45% V en D = Inclure une ma- jorité de 15 p.c. à 45 p.c.	various					
287(n)	Work or casual footwear (Czechoslovakia, Hungary, Poland, Romania) Chaussure de travail ou occasionnelle	VFD = Value of comparable footwear of U.K. origin V en D = La valeur des chaus- sures semblables origi- naires du R.-U.	61105-1	25	22.5	224,544	15,372	6.85
288(n)	Men's dress footwear (Czechoslovakia, Hungary, Bottes, bottines, souliers et pantoufles	VFD = Value of comparable footwear of U.S. origin V en D = La valeur des souliers semblables ori- ginaires des Etats-Unis	61105-1	25	22.5	224,544	15,372	6.85
291	Bicycles (South Korea) Bicyclettes (Corée de Sud)	VFD = Cost of production plus 25% V en D = Coût de production majoré de 25 p.c.	43900-1	25	13.2	21,220	5,543	26.12
*292	Motorcycles (Japan) Motocyclettes (Japon)	VFD = Domestic sales of another vendor V en D = Ventes nationales de marchandises sembla- bles d'un autre vendeur	43836-1 43839-1	12.5 12.5	12.5 8	45,024 73,962	38,795 61,753	86.17 83.49
303	Spring wound alarm clocks (Czechoslovakia, Hungary, China) Réveils à ressorts (Tchecoslovaquie, Hongrie, Chine)	VFD = Value of similar clocks of U.S. origin V en D = Valeur des réveils comparables originaires des Etats-Unis)	36800-1	25	22.5	17,523	622	3.55

TABLE III (CONT.)

TABLEAU III (SUITE)

(1) #(a)	(2) Description of Goods and Country/ Description des produits et pays	(3) Ruling/Décision	(4) Tariff Item(s) Commonly Applied/ Numéros tarifaires généralement appliqués	(5)		(6)		(7) Affected Imports as % of Total/ Importations affectées en % du total
				Rates of Duty (b) Taux de droit 1978	1987	Value of Imports/ Valeur des importations 1978	Country/ Pays	
				- %/p.c. -	- \$'000 -			- %/p.c. -
10(c)	Plans, drawings, and blueprints	VFD = A portion of the value of the structure to be erected, the selling price of the plan, the cost of producing the plan plus an advance or a rate per pound depending on the type of plan	18025-1 18030-1 18030-2	Free 17.5 -	Free 10.2 10.2	9,641 1,675 -	- - -	- - -
	Plans, dessins et bleus	V en D = Une partie de la valeur de la structure à ériger, le prix de vente du plan, le coût de production du plan plus une avance ou un taux à la livre selon la nature du plan						
B. MINISTERIAL DETERMINATIONS UNDER SECTION 39(d)/(PRESCRIPTIONS MINISTÉRIELLES EN VERTU DE L'ARTICLE 39 d)								
11	Newspaper matrices	VFD = Specific amounts for newspaper matrices for various sized sheets	20100-1 41235-1 41230-1 41240-1	Free Free 15 1¢/	Free Free 9.2 0.6¢/	530 1,602 11,909 39	- - - -	- - - -
	Matrice de journaux	V en D = Montants spécifiques pour les matrices de journaux pour des feuilles de grands divers		sq. in. sq. in.	sq. in.			
12	Printing plates	VFD = Advances of 25% to 150%	41230-1 41233-1	15 Free	9.2 9.2	11,909 3,083	- -	- -
	Plaques d'imprimerie	V en D = Majoration de 25 p.c. à 150 p.c.	41235-1 41240-1 41245-1	Free 1¢/ 15	Free 0.6¢/ 9.2	1,662 39 6,418	- - -	- - -

13	Original drawings and art work Dessins et travaux d'art originaux	VFD = 5% of the original cost of production V en D = 5 p.c. du coût de production de l'original	18000-1 69520-1	20 Free	11.3 Free	- -
14	Glass bottles, plastic containers, bottle caps, etc. for pharmaceuticals, toilet preparations, cosmetics Bouteilles de verre, contenants, capuchons, etc. pour préparations pharmaceutiques ou de toilette, cosmétiques	VFD = Exporter's large quantity purchase price plus 15% V en D = Le prix d'achat, en grande quantité de l'exportateur, majoré de 15 p.c.	32603-1 93907-1	20 17.5	11.3 13.5	- -
15	Promotional matter other than printed advertising matter Matériel publicitaire autre que des imprimés	VFD = Advances of 15% or 25% V en D = Majoration de 15 p.c. ou 25 p.c.	44524-1 46500-1	17.5 20	10.2 11.3	- -
18	Corrugated shipping containers Contenants fabriqués de carton gaufré	VFD = Includes advance of 15% or 25% V en D = Inclure une majoration de 15 p.c. ou 25 p.c.	19900-1 19910-1 19911-1	17.5 17.5 15	10.2 10.2 9.2	- - -
19(d)	Paper cartons, paper boxes and containers, other than corrugated shipping containers Boîtes et contenants en papier ou en carton, autres que les contenants en carton gaufré	VFD = An advance over either purchase price or cost of production V en D = Une majoration appliquée, soit au prix d'achat, soit au coût de production	19900-1 19910-1 19911-1	17.5 17.5 15	10.2 10.2 9.2	- - -
25	Pharmaceuticals, toilet preparations and cosmetics Préparations pharmaceutiques, de toilette et cosmétiques	VFD = Advance of 50%, 75% or 100% V en D = Inclure une majoration de 50 p.c., 75 p.c. ou 100 p.c.	16101-1 16102-1 20605-1 20615-1 21950-1 22001-1 22800-1 23000-1 23400-1 23405-1 69605-1 71100-1 92838-6 93402-1	20 25 Free Free Free 15 17.5 167/1b 20 15 Free 17.5 10 15	10 13.2 Free Free Free 9.2 10.2 .62¢/lb 11.3 9.2 Free 10.2 8.5 12.5	- - - - - - - - - - - - - -
26						
27						
28						

TABLE III (CONT.)

TABLEAU III (SUITE)

(1)	(2)	(3)	(4)	(5)	(6)	(7)
	Description of Goods and Country/ Description des produits et pays	Ruling/Décision	Tariff Item(s) Commonly Applied/ Numéros tarifaires généralement appliqués	Rates of Duty (b) Taux de droit 1978 1987	Value of Imports/ Valeur des importations 1978 Country/ Pays	Affected Imports as % of Total/ Importations affectées en % du total
(#(a)				- %/p.c. -	- \$'000 -	- %/p.c. -
39	Automobiles & automotive replacement parts (U.K. and Europe) Automobiles et pièces détachées (Royaume-Uni et Europe)	VFD = Discount of 20% or higher off user list V en D = Escompte de 20 p.c. ou plus de la liste des consommateurs	35400-1 42700-1 43803-1 43806-1 43810-1 43829-1 44524-1 44603-1 95001-1 95002-1 95006-1	17.5 10.2 15 9.2 15 9.2 15 Free 12.5 8 15 9.2 17.5 10.2 17.5 10.2 Free Free Free Free Free Free	107,261 2,911,266 976,398 65,400 13,431 423,391 560,403 592,682 3,088,674 5,233,465 2,163,518	- - - - - - - - - - -
51	Converted fabrics Tissu transformé	VFD = Advances of 10% or 15% V en D = Inclure une majo- ration de 10 p.c. ou 15 p.c.	52010-1 52203-1 52205-1 52305-1 54305-1 56005-1 56205-1 56300-1 57401-1 57402-1	5 Free 20 17.5 20 15 22.5 22.5 22.5 22.5 10 8.5 25+15¢/lb 25 25 25 27.5 25 22.5 22.5	407 94,490 13,276 140,482 26,380 31,802 61,504 251,589 56,894 22,993	- - - - - - - - - -
61(f)	Viscose rayon staple fibre (Cuba) Fibres artificielles ou synthétiques (Cuba)	VFD = Fair market value of similar U.S. fibre V en D = Juste valeur mar- chande de fibre semblable des Etats-Unis	56005-1 56010-1	10 8.5 10 8.5	31,802 5,298	- -
73(e)	Diamonds and jewellery Diamants et bijoux	VFD = Specific appraised values V en D = Valeurs précises appréciées	62300-1 64700-1 64800-1 64803-1 64805-1	20 11.3 25 13.2 Free Free 10 6.8 Free Free	65,623 43,722 16,837 139 79,966	- - - - -
81(f)	Polyester staple buttons (Japan) Agrafes de bouton polyester (Japon)	VFD = Specific minimum values for particular styles and types V en D = Valeurs minimales spécifiques pour cer- tains modèles	65100-1	20 + 12.6 + 5¢/gross 5¢/gross	4,432 371	8.37

85(f)	Bicycles (Japan)	VFD = Cost of production plus profit earned on similar domestic models V en D = Coût de la production plus les profits gagnés des modèles intérieurs semblables	43900-1	25	13.2	21,220	4,138	19.50
	Bicyclettes (Japon)							
103	Clothing (Hong Kong)	VFD = Cost of production plus profit earned on domestic sales V en D = Coût de production plus les profits réalisés sur les ventes intérieures	52305-1 53305-1 54305-1 56300-1 56805-1 56830-1 56905-1 56910-1 56940-1 61120-1 61800-1 93907-1	22.5 25 22.5 25 27.5 25 20 25 Free 22.5 17.5 17.5	22.5 25 22.5 25 25 25 20 20 Free 22.5 10.2 13.5	140,482 37,919 26,380 251,589 332,710 64,202 754 6,652 3,953 3,898 81,369 303,951	31,994 1,751 2,900 30,017 57,704 12,257 14 190 - 217 177 10,004	22.77 4.62 10.99 11.93 17.34 19.09 1.86 2.86 - 5.57 .22 3.29
	Vêtements (Hong Kong)							
113(e)	Biscuits	VFD = FMV of the goods in England in accordance with section 36 V en D = JVM des marchandises en Angleterre en conformité avec l'article 36	6500-1 6505-1	7.5 Free	5 Free	1,034 169	- -	- -
	Biscuits							
119(e)	Seized Jewellery	VFD = Suggested retail prices at the time of the seizure V en D = Prix suggéré au détail au moment de la saisie	64700-1	25	13.2	43,722	-	-
	Bijoux saisis							
*177(e) *178(e)	Electric can openers and mixers (Japan) Ouvre-boîtes et malaxeurs électriques (Japon)	VFD = Certain specific values V en D = Certaines valeurs spécifiques	42700-1	15	9.2	2,911,266	102,219	3.5
215	Bicycles (Taiwan) Bicyclettes (Taiwan)	VFD = Export price plus 33 1/3% V en D = Le prix à l'exportation majoré de 33 1/3 p.c.	43900-1	25	13.2	21,220	1,544	7.28
217(j)	Footwear (Taiwan) Chaussures (Taiwan)	VFD = Actual selling price + 20% V en D = Prix de vente réel majoré de 20 p.c.	61100-1 61105-1 61110-1 61115-1	22.5 25 25 20	22.5 22.5 20 20	814 224,544 19,719 67	17 28,858 5,903 3	2.1 12.9 29.9 4.5

TABLE III (CONT.)

TABLEAU III (SUITE)

(1)	(2)	(3)	(4)	(5)	(6)	(7)
#(a)	Description of Goods and Country/ Description des produits et pays	Ruling/Décision	Tariff Item(s) Commonly Applied/ Numéros tarifaires généralement appliqués	Rates of Duty(b) Taux de droit	Value of Imports/ Valeur des importations	Affected Imports as % of Total/ Importations affectées en % du total
				1978 1987	1978 Country/ Total Pays	
				- %/p.c. -	- \$'000 -	- %/p.c. -
219	Footwear (South Korea)	VFD = Selling price plus 10%	61105-1 61700-1	25 22.5 20 20	224,544 14,807 10,356 4,475	6.59 43.21
	Chaussures (Corée du Sud)	V en D = Le prix de vente majoré de 10 p.c.				
220(k)	Wearing apparel (South Korea)	VFD = Selling price plus 15%	52305-1 53305-1	22.5 22.5 25 25	140,482 2,698 37,919 7,169	1.92 18.91
	Vêtements (Corée du Sud)	V en D = Le prix de vente majoré de 15 p.c.	54305-1 56300-1 56805-1 56830-1 56905-1 56910-1 56940-1 61120-1 61800-1 93907-1	22.5 22.5 25 25 27.5 25 25 25 20 20 25 20 Free 22.5 22.5 17.5 10.2 17.5 13.5	26,380 418 251,589 57,822 332,710 44,671 64,202 14,249 754 - 6,652 2,798 3,953 - 3,898 13 81,369 3,104 303,951 1,140	1.58 22.98 13.43 22.19 - 42.06 - .33 3.81 .38
241(i)	Men's footwear (Italy) Chaussures pour hommes (Italie)	VFD = Selling price + 15% V en D = Prix de vente + 15 p.c.	61100-1 61105-1 61110-1 61115-1	22.5 22.5 25 22.5 25 20 20 20	814 184 224,544 62,378 19,719 404 67 15	22.6 27.8 2.0 22.4
245	Metal furniture casters (South Korea)	VFD = The value of comparable Japanese casters or in the absence of such values an advance of 33% over the export price as determined under the Anti-dumping Act	34600-1 35200-1 35400-1 36215-1 44603-1 51901-1 51902-1 71100-1 93907-1	17.5 10.2 17.5 10.2 17.5 10.2 17.5 10.2 17.5 10.2 20 15 17.5 12.5 17.5 10.2 17.5 13.5	8,905 0 86,427 198 107,261 537 73,314 504 592,682 1,240 167,365 269 50,650 511 129,784 186 303,951 1,140	0 .23 .50 .69 .21 .16 1.01 .14 .38
	Roulettes de meuble en métal (Corée du Sud)	V en D = Valeur de roulettes comparables au Japon. Sinon, une majoration de 33 p.c. du prix à l'exportation déterminé en vertu de la Loi antidumping				

#260(1)	Brassieres (Philippines)	VFD = Price of the material components + an advance of 125% + processing charges V en D = Prix des éléments + une majoration de 125 p.c. + les frais de traitement	52305-1 54305-1 56300-1 56805-1	22.5 22.5 25 27.5	22.5 22.5 25 25	140,482 26,380 251,589 332,710	241 108 1,420 2,124	0.2 0.4 0.6 0.6
274	Soutiens-gorge (Philippines)							
	Footwear (Brazil)	VFD = Selling price plus 50%	61105-1 61110-1 61700-1	25 25 20	22.5 20 20	224,544 19,719 10,356	12,794 - 1	5.70 - .01
	Chaussures (Brésil)	V en D = Le prix de vente réel majoré de 50 p.c.						
289	Footwear (Spain) Chaussures (Espagne)	VFD = Selling price plus 5% V en D = Le prix de vente majoré de 5 p.c.	61105-1 61110-1 61700-1	25 25 20	22.5 20 20	224,544 19,719 10,356	18,718 424 -	8.34 2.15 -
299(o)	Wearing apparel (Taiwan) Vêtements (Taiwan)	VFD = Selling price + 25% V en D = Prix de vente + 25 p.c.	52305-1 54305-1 56300-1 56805-1	22.5 22.5 25 27.5	22.5 22.5 25 25	140,482 26,380 251,589 332,710	12,916 709 23,145 79,555	9.1 2.7 9.2 23.9

C. MINISTERIAL DETERMINATIONS UNDER SECTION 40/PRESRIPTIONS MINISTERIELLES EN VERTU DE L'ARTICLE 40

#54(e)	Greige cotton corduroy piece goods Articles en velours cotelé de coton grège	VFD = Selling price by another vendor V en D = Prix de vente d'un autre vendeur	52203-1 52205-1 52220-1	20 20 Free	17.5 15 Free	94,490 13,276 14,083	- - -	- - -
104(f)	Glace cherries (France) Cerises glacées (France)	VFD = Advances or reductions of the value of No. 1 whole and for other types V en D = Les augmentations ou réductions de la valeur des cerises rouges entières #1	10535-1 10608-1	15 14/1b	15 14/1b	749 5,238	11 4	1.47 .08
132(f)	High voltage circuit breakers (France, Japan) Interrupteurs à haut voltage (France, Japon)	VFD = Export price as determined under the Anti-dumping Act plus 10% V en D = Prix à l'exportation tel que déterminé par la Loi antidumping majoré de 10 p.c.	44524-1	17.5	10.2	560,403	51,542	9.20
#133(f)	Plastic drainage tubing & accessories (U.S.) Tuyauterie plastique d'écoulement et accessoires (Etats-Unis)	VFD = Invoice price plus 50% V en D = Le prix de la facture majoré de 50 p.c.	93901-81 93902-81 93903-81 93907-1	17.5 17.5 15 17.5	13.5 13.5 12.5 13.5	55,138 66,819 18,610 303,951	48,322 55,733 16,344 241,146	87.64 83.41 87.82 79.34

TABLE III (CONT.)

TABLEAU III (SUITE)

(1)	(2)	(3)	(4)	(5)		(6)	(7)
#(a)	Description of Goods and Country/ Description des produits et pays	Ruling/Décision	Tariff Item(s) Commonly Applied/ Numéros tarifaires généralement appliqués	Rates of Duty (b) Taux de droit		Value of Imports/ Valeur des importations Total/ Country/ Total Pays	Affected Imports as % of Total/ Importations affectées en % du total
				1978	1987		
				- %/p.c. -	- %/p.c. -		
*146(f)	Expanded vinyl luggage & components (Italy) Bagage vinyle étendu et com- posantes (Italie)	VFD = Invoice price plus 50%	62200-1 62300-1	20 20	17.5 11.3	24,247 65,623 5,170	.65 7.88
189(i)	Women's footwear (Italy) Chaussures pour dames (Italie)	FMV = F.O.B. selling price advanced by 6% JVM = Prix de vente f.-à-b. majoré de 6 p.c.	61100-1 61105-1 61110-1 61115-1	22.5 25 25 20	22.5 22.5 20 20	814 224,544 19,719 67 184 62,378 404 15	22.6 27.8 2.0 22.4
205	Colour television receiving sets (Singapore, Taiwan) Téléviseurs couleurs (Singapour, Taiwan)	VFD = Value of like or similar Japanese goods V en D = La valeur des produits semblables du Japon	44533-1 44534-1	15 15	9.2 Free	659,837 7,594 509	6.46 6.70
211(f)	Wooden clothespins (Hong Kong) Pinces à linge en bois (Hong Kong)	FMV = Export price plus 89% JMV = Le prix à l'export- tation plus 89 p.c.	50605-1	20 1/2 gross	12 1/2 gross	393 59	15.01
244	Metal furniture casters (Japan) Des roulettes de meubles en métal (Japon)	FMV = Export price plus 26 p.c. JVM = Le prix à l'export- tation majoré de 26 p.c.	34600-1 35200-1 35400-1 36215-1 44603-1 51901-1 51902-1 71100-1 93907-1	17.5 17.5 17.5 17.5 17.5 20 17.5 17.5 17.5	10.2 10.2 10.2 10.2 10.2 15 12.5 10.2 13.5	8,905 86,427 107,261 73,314 5,022 592,682 167,365 50,650 129,784 303,951 2,197 4,443 1,712 5,022 22,858 951 332 8,696 5,778	24.67 5.14 1.60 6.85 3.86 .57 .66 6.70 1.90

	Essence, ordinaire et super-carburant	V en D = 10.5¢ le gallon (Impérial) pour l'essence ordinaire 12.5¢ le gallon (Impérial) supercarburant				
178(e)	Cotton trousers, slacks, shorts, sleepwear and shirts (Macao) Pantalons, pantalons d'intérieur, shorts, vêtements de nuit et chemises de coton (Macao)	VFD = Advancing the FMV or selling price, whichever is higher, by 150% V en D = Majoration de la JVM ou du prix de vente, soit le plus élevé, de 150 p.c.	22.5	22.5	140,482	-
179(e)	Elastic braid Ruban élastique	VFD = Advancing the FMV or selling price, whichever is higher, by 100% V en D = Majoration de la JVM ou du prix de vente, soit le plus élevé, de 100 p.c.	22.5	20	3,446	-
93(e)	Grain corn Maïs-grain	VFD = Not less than \$1.12875/bushel (Canadian funds) V en D = Pas moins de \$1.12875 le boisseau	8¢/bushel	8¢/bushel	54,987	-
95(e)	Ex-quota, shipments of cotton yarn (Portugal) Expéditions de fil de coton en plus de la quantité allouée (Portugal)	VFD = Advance on FMV or selling price of 100% V en D = Majoration du prix de vente ou de la J.V.M. de 100 p.c.	17.5	12.5	14,221	97 0.7
174(f)	Professional golf balls and equipment (U.S.) Balles de golf et accessoires professionnels (Etats-Unis)	VFD = Higher of domestic selling price to professionals less 25% or price to importer V en D = Le prix de vente intérieur aux professionnels moins 25 p.c. ou le prix à l'importateur, le plus élevé des deux	17.5 17.5 17.5 15 20 15 Free 20 25 17.5 20	10.2 10.2 10.2 9.2 11.3 Free Free 11.3 25 12.5 17.5	107,261 84,513 592,682 23 33,536 1,395 736 1,087 64,202 9,361 24,427	95,465 83,291 469,189 20 20,112 869 629 67 8,040 2,514 4,131
						89.00 98.55 79.16 86.96 59.97 62.29 85.46 6.16 12.52 26.86 16.9

TABLE III - FOOTNOTES (CONT.)

The following prescriptions were issued under authority of section 39(a) because like or similar goods were not sold in the country of export or were not sold under the circumstances described in section 36 or 37.

#	22	#181	#258
	63	186	270
	72	188	284
	76	206	287
	82	210	288
	84	212	291
	102	239	292
	167	240	303

The following prescriptions were issued under authority of section 39(d) because the Minister was of the opinion that by reason of unusual circumstances the application of sections 36 and 37 was impracticable.

#	11	#	28	#178
	12	39	215	215
	13	51	217	217
	14	61	219	219
	15	73	220	220
	18	81	241	241
	19	85	245	245
	25	103	260	260
	26	113	274	274
	27	119	289	289
		177	299	299

The following prescriptions were issued under authority of section 40 because sufficient information was not furnished or was not available to enable the determination of cost of production, gross profit or fair market value under section 36 or 37.

#	54	#133	#205
	104	146	211
	132	189	244

The authority for the following prescriptions is not known.

#	75	#	79	#	95
	78		93		174

TABLEAU III - NOTES EN BAS DE PAGE (SUITE)

Les prescriptions suivantes étaient émises en vertu de l'article 39 a) parce que des produits pareils ou semblables n'ont pas été vendus dans le pays d'exportation ou n'ont pas été vendus sous les circonstances indiquées aux articles 36 ou 37.

#	22	#181	#258
	63	186	270
	72	188	284
	76	206	287
	82	210	288
	84	212	291
	102	239	292
	167	240	303

Les prescriptions suivantes étaient publiées en vertu de l'article 39 d) car le Ministre était d'avis qu'en raison de circonstances exceptionnelles l'application des articles 36 et 37 n'était pas pratique.

#	11	#	28	#178
	12	39	215	215
	13	51	217	217
	14	61	219	219
	15	73	220	220
	18	81	241	241
	19	85	245	245
	25	103	260	260
	26	113	274	274
	27	119	289	289
		177	299	299

Les prescriptions suivantes étaient émises en vertu de l'article 40 parce que des renseignements suffisants n'étaient pas fournis ni n'étaient disponibles pour permettre la détermination du coût de production, du profit brut ou de la juste valeur marchande aux termes de l'article 36 ou 37.

#	54	#133	#205
	104	146	211
	132	189	244

Les articles de la Loi qui gouvernent les prescriptions suivantes ne sont pas connus.

#	75	#	79	#	95
	78		93		174

TABLE III - FOOTNOTES. (CONCL.)

- (a) Ministerial determinations indicated with an asterisk(*) are company specific.
- (b) Rates of duty are ad valorem unless otherwise specified.
- (c) Ministerial determination has been cancelled by determination number 337 dated April 17, 1980.
- (d) Ministerial determination has been cancelled by determination number 313 dated July 14, 1979.
- (e) Ministerial determination is not currently applicable.
- (f) Ministerial determination has been cancelled by determination number 363 dated September 14, 1981.
- (g) Ministerial determination has been cancelled by determination number 366 dated November 20, 1981.
- (h) Ministerial determination has been cancelled by determination number 318 dated October 12, 1979.
- (i) Ministerial determination has been cancelled by determination number 316 dated October 12, 1979.
- (j) Ministerial determination has been cancelled by determination number 317, dated October 12, 1979.
- (k) Ministerial determination has been cancelled by determination number 359, dated June 23, 1981.
- (l) Ministerial determination has been cancelled by determination number 348 dated December 1, 1980.
- (m) Ministerial determination has been cancelled by determination number 367, dated November 20, 1981.
- (n) Ministerial determination has been cancelled by determination number 360, dated June 1, 1981.
- (o) Ministerial determination has been cancelled by determination number 335, dated July 7, 1980.
- (p) Item did not exist in 1978.

TABLEAU III - NOTES EN BAS DE PAGE (FIN)

- a) Les prescriptions ministérielles marquées d'un astérisque sont établies selon les indications des compagnies.
- b) Les taux de droits sont ad valorem à moins de spécifications contraires.
- c) La prescription ministérielle a été annulée par la prescription numéro 337 du 17 avril 1980.
- d) La prescription ministérielle a été annulée par la prescription numéro 313 du 14 juillet 1979.
- e) La prescription ministérielle ne s'applique pas à l'heure actuelle.
- f) La prescription ministérielle a été annulée par la prescription numéro 363 du 14 septembre 1981.
- g) La prescription ministérielle a été annulée par la prescription numéro 366 du 20 novembre 1981.
- h) La prescription ministérielle a été annulée par la prescription numéro 318 du 12 octobre 1979.
- i) La prescription ministérielle a été annulée par la prescription numéro 316 du 12 octobre 1979.
- j) La prescription ministérielle a été annulée par la prescription numéro 317 du 12 octobre 1979.
- k) La prescription ministérielle a été annulée par la prescription numéro 359 du 23 juin 1981.
- l) La prescription ministérielle a été annulée par la prescription numéro 348 du 1er décembre 1980.
- m) La prescription ministérielle a été annulée par la prescription numéro 367 du 20 novembre 1981.
- n) La prescription ministérielle a été annulée par la prescription numéro 360 du 1er juin 1981.
- o) La prescription ministérielle a été annulée par la prescription numéro 335 du 7 juillet 1980.
- p) Le numéro tarifaire n'existait pas en 1978.

TABLE IV

MINISTERIAL DETERMINATIONS ISSUED UNDER THE
AUTHORITY OF SECTION 39(b) OF THE CUSTOMS ACT
AND IN EFFECT ON APRIL 1, 1979

TABLEAU IV

PRESCRIPTIONS MINISTÉRIELLES ÉTABLIES EN VERTU DE
L'ARTICLE 39b) DE LA LOI SUR LES DOUANES
ET EN VIGUEUR LE 1er AVRIL 1979

(1)	(2)	(3)	(4)	(5)	(6)		(7)
					Value of Imports/ Valeur des importations	Total/ Totale	
#(a)	Description of Goods and Country/ Description des produits et pays	Ruling/Décision	Tariff Item(s) Commonly Applied/ Numéros tarifaires généralement appliqués	Rates of Duty(b) Taux de droit 1978	Country/ Pays	Total/ Total	Affected Imports as % of Total/ Importations affectées en % du total
				- %/p.c. -	- \$'000 -		- %/p.c. -
5	Steel sheets, strip and plates, other than prime quality	VFD = Value as determined under section 36 of the Customs Act	38005-1 38100-1 38105-1	Free 10 15	14,203 95,252 4,139	- - -	- - -
	Feuilles, feuillets et plaques d'acier de qualité secondaire	V en D = Valeur déterminée en conformité avec l'ar- ticle 36 de la Loi sur les douanes	38110-1 38201-1 38202-1 38203-1 38204-1 38205-1 38206-1 38208-1 38300-1 38500-1 44603-1	12.5 10 12.5 12.5 12.5 12.5 7.5 7.5 Free Free 15	1,974 50,645 57,393 1,089 24,104 5,775 17 5,342 8,339 8,624 592,682	- - - - - - - - - - -	- - - - - - - - - - -
29	Semi-finished pharmaceuticals, toilet preparations and cosmetics	VFD = Advance of 25% or 50%	93819-1	15	12.5	163,257	-
	Préparations pharmaceutiques, et cosmétiques devant subir un complément d'ouvraison	V en D = Inclure une majo- ration de 25 p.c. ou 50 p.c.					
30	Raw materials for pharmaceu- ticals, toilet preparations and cosmetics	VFD = Exporter's large quantity purchase price plus 5%	92801-1 92801-2 92801-3	15 15 Free	1,427 450 842	- - -	- - -
	Matières premières pour les préparations pharmaceutique, de toilette ou les cos- métiques	V en D = Le prix d'achat en grande quantité de l'exportateur majoré de 5 p.c.	92802-1 92804-1 92804-2 92804-3 92804-4 92804-5 92805-2 92805-3	15 15 15 15 15 15 15 15	911 5,681 647 1,335 866 110 210 6,067	- - - - - - - -	- - - - - - - -

33	Bare castings and stampings	VFD = Section 36 or in its absence, cost of production plus 15%	39000-1	15	9.2	24,848	-
	Moulages non ouvrés	V en D = Article 36, sinon le coût de production majoré de 15 p.c.	39005-1 95002-1 95006-1	Free Free Free	Free Free Free	2,204 5,233,465 2,163,518	- - -
42	Cotton sheets, pillowcases and fabrics	VFD = Deduction of 10% or less from prime quality price	52201-1 52202-1 52203-1 52305-1	17.5 20 20 22.5	15 17.5 17.5 22.5	21,356 9,846 94,490 140,482	- - - -
	Draps et taies d'oreiller de coton et tissus de coton	V en D = Escompte de 10 p.c. ou moins du prix des marchandises de première qualité					
43	Other-than-prime quality regenerated cellulose film and polyethylene synthetic resin and processed polyethylene synthetic resin	VFD = Value for prime quality less a maximum discount of 10%	93902-3 93902-42 93903-82	10 12.5 15	9.5 11 12.5	60,765 8,501 4,763	- - -
	Pellicule de cellulose régénérée de qualité inférieure et résine de polyéthylène synthétique et résine de polyéthylène synthétique reproduite	V en D = Valeur pour la première qualité moins un escompte maximal de 10 p.c.					
46(c)	Used Chicago press brake and used lead screw tapping machine	VFD = Replacement value less allowances	42700-1	15	9.2	2,911,266	-
	Presse-plier d'occasion et taraudeuse d'occasion de vis-mère	V en D = Valeur de remplacement moins les déductions					
52(c)	Army leather boots	VFD = Price of like or most similar boots sold by vendors in the United States	61105-1	25	22.5	224,544	-
	Bottes d'armée en cuir	V en D = Prix des bottes les plus semblables vendues aux Etats-Unis					
55(c)	Rubber coated fiberglass cloth (United States)	VFD = 33¢/sq. yd., U.S. funds	56205-1 57401-1	25+15¢/lb 27.5	25+Free 25	61,504 56,894	48,370 52,803
	Tissu en fibre de verre enduit de caoutchouc	V en D = 33¢ la verge carrée en \$ E.-U.					78.6 92.8

TABLE IV (CONCL.)

(1)	(2)	(3)	(4)	(5)	(6)	(7)
#(a)	Description of Goods and Country/ Description des produits et pays	Ruling/Décision	Tariff Item(s) Commonly Applied/ Numéros tarifaires généralement appliqués	Rates of Duty(b) Taux de droit 1978 1987	Value of Imports/ Valeur des importations Total/ Country/ Totale Pays	Affected Imports as % of Total/ Importations affectées en % du total
176*	Component parts for slide fasteners or zippers (Japan) Parties composantes de fermetures éclair (Japon)	VFD = Determined in a manner similar to that for semi-manufactured goods V en D = Déterminé d'une façon semblable à celle visant des marchandises partiellement ouvrées	unknown	- %/p.c. - - - -	- \$'000 - - - -	- %/p.c. - - - -

FOOTNOTES

- (a) Ministerial determinations indicated with an asterisk (*) are company specific.
 (b) Rates of duty are ad valorem unless otherwise specified.
 (c) Ministerial determination not currently applicable.

NOTES EN BAS DE PAGE

- a) Les prescriptions ministérielles marquées d'un astérisque (*) sont établies selon les indications des compagnies.
 b) Les taux de droits sont ad valorem à moins de spécifications contraires.
 c) La prescription ministérielle ne s'applique pas à l'heure actuelle.

APPENDIX C

REFERENCE NO. 159

THE GATT AGREEMENT
ON CUSTOMS VALUATION

PART II

POSSIBLE TARIFF ADJUSTMENTS

STAFF APPRECIATION
OF THE EVIDENCE

DECEMBER, 1982

NOTE: The page numbers in this Appendix are the same as those of the original document.

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CHAPTER I

Developments to Date

Tariff Board Reference 159 deals with certain aspects of Canada's implementation of the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade, commonly referred to as the GATT Customs Valuation Code. The Code was negotiated during the course of the GATT Tokyo Round of multi-lateral trade negotiations which reached their substantive conclusion in April 1979. The texts of the various agreements were then verified by legal experts and formally signed by government representatives in December 1979. At the time of signing the Government of Canada reserved the right to delay implementation of the Code until January 1, 1985, in order to permit the possibility of making certain tariff rate adjustments. On August 29, 1980, the Minister of State (Finance) sent the following letter of reference to the Chairman of the Tariff Board.

Dear Mr. MacDonald:

Canada agreed, in the context of the Multilateral Trade Negotiations in Geneva, to adopt the new international agreement on customs valuation, copy attached, provided certain conditions were met. A copy of the Canadian Reservation to the agreement, which was signed December 17, is also attached.

I believe it would be appropriate for the Tariff Board to review certain matters relating to implementation of the customs valuation agreement by Canada. I therefore direct the Tariff Board to make a study and report, under Section 4 of the Tariff Board Act, on:

- (1) whether the attached draft legislation would provide a suitable basis for valuing Canadian imports in accordance with the agreement;
- (2) the impact that implementation of such legislation would have on tariff protection.

I think it is important that there be public hearings on the draft legislation in advance of the Board's study and hearings on the possible impact of such a new valuation system on tariff protection. In the first part of its study the Board should examine the extent to which the draft legislation fully protects the rights, and gives effect to the obligations, that Canada would have as a signatory to the agreement. In this connection, I would ask the Board to take into account the way in which Canada's major trading partners intend to implement their rights and obligations under the agreement.

I would also like the Board's views on whether the valuation rules are set out in the draft legislation in sufficient clarity to enable importers and exporters to estimate,

with reasonable accuracy, the value for duty of their goods in advance of importation, and whether the draft legislation would provide an adequate basis for appeals to the Tariff Board in cases where there may be disputes as to the proper valuation.

The Board's report on the first part of the reference together with any recommendations for revisions to the draft legislation should be submitted to me by April 1, 1981. I would expect to be in a position to give the Board an indication as to the government's position on any changes recommended in the draft legislation within three months of their receipt.

The primary objective of the second phase of the Board's study is to provide advice on what, if any, tariff adjustments would be required to maintain the same level of tariff protection or to ensure that duties collected would not decline significantly if the new valuation system were adopted. The level of duties collected should be calculated on the basis of concessions negotiated in the Tokyo Round, or where there were no such concessions, the applied tariff rates. I would expect to receive detailed recommendations in this regard either on an item-by-item basis or whatever other basis seems appropriate. In conducting this study the Board should only examine the valuation system as it existed and was being applied at the beginning of April 1979, when Canada announced it would adopt the agreement on customs valuation if certain conditions were met. I would leave it up to the Board to decide what evidence is relevant in this regard.

In cases where the value for duty is now established by Ministerial prescription under Section 39 of the Customs Act (for example used goods, job lots, discontinued lines and other-than-prime quality goods) I would direct the Board to consider whether or not a tariff rate adjustment would be the most appropriate or feasible means of providing the protection now accorded in these cases by virtue of the Ministerial prescriptions. In this connection, I would ask the Board to consider whether some of the problems which the current valuation system seeks to address might better be dealt with under other instruments of import policy, including those discussed in the recently published discussion paper on Import Policy.

I would ask that the Board report on the second part of the reference by July 1, 1983 to allow the government time to reach decisions on these matters and discuss them with our trading partners prior to January 1, 1985.

Yours sincerely,

Pierre Bussières.

The Board's report on the proposed legislation was completed and signed on March 27, 1981.⁽¹⁾

On December 21, 1981, the Minister of State (Finance) wrote to the Chairman conveying his response to the Board's Report on the proposed customs valuation legislation and providing a revised text of the legislation.⁽²⁾ For the most part the re-drafted legislation incorporated the Board's recommendations. In his letter the Minister stated that, while the Government reserved the right to amend the draft legislation further, the Board should conduct the second part of its inquiry under Reference No. 159 on the assumption that the revised draft legislation reflected the basic policy decisions of the Government on the issues raised by the Board. In addition, the Minister stated that any further drafting changes were likely to be essentially of a "housekeeping" nature and should not affect the substance of the Board's inquiry into possible tariff rate adjustments.

After studying the Minister's response the Board concluded that the Government intended to implement the GATT Customs Valuation Code by January 1, 1985, in the manner provided for in the draft legislation. This meant that the transaction price system of customs valuation would replace the fair market value system for all products, from all sources and without exceptions by January 1, 1985. In the light of this understanding the Board published a background paper in January 1982 outlining a number of possible tariff rate adjustments which might be necessary or appropriate to compensate Canada for certain specific losses in tariff protection due solely to the adoption of the transaction valuation system. The background paper also requested comments from interested parties concerning the criteria which might be applied by the Board on a uniform basis when it selects specific tariff items for adjustment. The Board also sought views on how certain import problems, which have been resolved under various provisions of the fair market value system, might best be dealt with in future when a directly analagous solution may not be possible under the transaction value system. Finally, the background paper presented information relating to importations during 1978 under several hundred tariff items where valuation actions might have indicated that compensatory tariff adjustments may be necessary or appropriate following implementation of the transaction value system.

The Tariff Board held a public hearing at its courtroom in Ottawa on June 14-16 to review submissions and to hear additional information from interested parties.

(1) Reference No. 159 - A Report of an Inquiry by the Tariff Board respecting the GATT Agreement on Customs Valuation, Part I - Proposed Amendments to the Customs Act. Copies of the report are available from Printing and Publishing, Supply and Services Canada, Ottawa, K1A 0S9, or through your bookseller. The publication number is FT4-159E and the price in Canada is \$9.00, other countries \$10.80.

(2) Copies of the December 1981 text of the proposed legislation to implement the International Agreement on Customs Valuation may be obtained from Information Services, Department of Finance, Place Bell Canada, Ottawa, Ontario, K1A 0G5.

Purpose of the Staff Appraisal

The Tariff Board has recently introduced into its reference procedures the provision for a public hearing on the staff's appraisal of the evidence and issues before the Board. The Board's reasons for this development are twofold. First, it ensures that the evidence presented by the public has been taken fully into account. Second, and perhaps most important, it provides an opportunity for interested parties to comment in the public record on the issues and analysis presented to the Board by its staff. The Board feels that the purpose and integrity of the public hearing process can only be met fully if all the evidence and analysis on which its recommendations are based have been expressed and discussed in public before the Board reaches its decisions and presents its recommendations.

This paper has been prepared by the staff alone and does not carry the approbation of the Board itself. In the preparation of this paper the staff has attempted to take into account fully the views and concerns of those members of the public who have made representations to the Board to date. A perusal of the summary of the evidence presented in Chapter II illustrates that on many issues various parties have presented different and often diametrically opposed solutions. In addition, there may be other legitimate issues which have not yet been raised during the public hearings but which should at least be considered. The public hearing on the staff appraisal provides an opportunity for members of the public to add their views and practical experience to the final body of evidence on which the Board will base its recommendations.

The Reference Process

It has become apparent throughout the entire course of Reference 159 that a major issue of contention has focused on various interpretations of what exactly the Tariff Board was asked to do in the Minister's letter of reference. When a reference is received from the Minister of Finance the terms of reference are carefully studied by the Board. If there is any uncertainty concerning the terms of reference further clarification may be sought from the Minister. When the Board is satisfied that it understands clearly the specific issues on which its advice is sought, the issues are discussed with the staff and instructions are given for the preparation of a background paper. The publication of a background paper serves two main functions. First, it provides guidance to interested members of the public as to the Board's interpretation of the issues on which it will subsequently be making recommendations. Second, the background paper presents the basic commercial and research data available from both public and governmental sources which may be relevant to these issues. The background paper is sent to all known interested parties to assist them in the preparation of their submissions. A public hearing also is scheduled at which submissions from the public are examined and where all members of the public have an opportunity to comment on the views expressed by others.

In dealing with references the Board has, in effect, acted as a commission of economic inquiry rather than as a court of law as is the case in appeals. As a consequence, the rules of evidence do not apply during the course of public hearings on references. This enables interested parties to place on the public

record views and information which, although not directly relevant to the issues before the Board, may be of interest or concern to the parties involved. Reports to the Minister of Finance include all submissions and transcripts, although the recommendations may only reflect such evidence as the Board considers relevant to the issues.

This procedure has the advantage of ensuring that, while the terms of a particular reference may be very specific or technical, the government does receive the entire spectrum of evidence from those parties who avail themselves of the opportunity to make submissions to the Board. It may, however, have the disadvantage of leaving such parties with the impression, because such evidence is not dismissed, that the Board has the power, on its own authority, to alter the terms of reference to fit the evidence presented. This is not the case. A second disadvantage is that the evidence received from the public may be biased towards a particular point of view or interest group. As a result, the staff attempts to present additional evidence so as to create a fuller picture of the issues. The final evaluation of the evidence from all sources and the consequent recommendations are, however, the responsibility of the Board itself.

A considerable portion of the evidence submitted to date in respect of Reference 159 has been very broad ranging and not related directly to the issues before the Board. Many of the views expressed respecting the discontinuation of the present fair market value method of customs valuation may be correct but they fall outside the Board's terms of reference. This is not to say, however, that such evidence is unwelcome or inappropriate. Indeed, the Minister stated in the letter of reference that "I think it is important that there be ... hearings on the possible impact of such a new valuation system on tariff protection".⁽³⁾ Thus, it is clear from the very beginning that the government was aware that implementation of the GATT Customs Valuation Code would have an impact on the actual level of tariff protection. Indeed the government instructed the Board to hear evidence on the possible loss of tariff protection. Further, the Minister, in responding to correspondence from the Canadian Manufacturers' Association (CMA) and the Canadian Textiles Institute (CTI), invited these organizations to make all their views known to the Tariff Board. The Board has in the past and will continue in the future to hear and report to the Minister all of the evidence which interested parties choose to present.

There is a difference, however, between the collecting and reporting of such views and the making of recommendations on specific issues identified by the Minister. In respect of Part I of Reference 159 the Minister stated specifically that "In the first part of its study the Board should examine the extent to which the draft legislation fully protects the rights, and gives effect to the obligations, that Canada would have as a signatory to the agreement".⁽⁴⁾ The Board interpreted this as an instruction to compare only the provisions of the GATT Customs Valuation Code and the provisions of the draft legislation to implement it in Canadian law. The Board was not asked whether or not the government should sign the agreement. The Board was not asked whether the provisions of the Code would

(3) Supra, p. 1.

(4) Supra, p. 1.

perform adequately all of the functions presently provided for under the fair market value system. The Board was not asked to carry out a comprehensive comparative study of the impact of fair market value system and the proposed transaction value system. In its Report on Part I the Board provided a summary of all the evidence but confined its recommendations to those issues which were related either to the conformity of the Code and the draft legislation or to questions of clarity and administration. There is no evidence in the Minister's December 1981 response that the scope of the Board's Report on Part I was other than had been intended in the letter of reference.

It is recognized that some parties were disappointed that the recommendations in the Report on Part I focussed almost entirely on the technical issues of comparability, clarity and future administration and that the Report was silent on what some participants considered to be the fundamental question of whether Canada should implement the transaction system of valuation in whole or in part. This disappointment was heightened following the publication of the background paper for Part II on possible upward tariff adjustments which might be made in conjunction with implementation of the transaction value system. Many were surprised, perhaps even shocked, that the possible upward tariff rate adjustments were negligible in so many cases. The response of many of the directly affected parties was varied but understandable. The initial reaction of some parties was to question either the methodology applied by the staff in preparing the statistical tables or the correctness of the calculations themselves. In the months since the publication of the background paper the staff have had numerous consultations with representatives of a broad range of business interests. There now seems to be a general consensus that the methodology used by the Board is acceptable and equitable, at least as it applies to those products which had been identified for possible adjustment. It should also be reported that representatives of several members of the GATT requested and were granted meetings with the staff to discuss the background paper. The representatives of foreign governments did not at any time attempt to influence the staff on any issue. Their common interest was to seek clarification on the staff's methodology for identifying and calculating possible adjustments. None of the foreign representatives expressed objections to the methodology although some undoubtedly have concerns about specific results which may affect their domestic producers' future exports.

Several submissions in response to the background paper again urged the Board to recommend that the transaction value system should not be implemented or that, if it is implemented, it should not apply to certain importations. A few submissions suggested that implementation should be delayed until after the next major round of GATT negotiations. These proposals were also made directly to the Minister by the CTI and the CMA.⁽⁵⁾ In his replies to the CMA and CTI the Minister stated that Canada has already signed the GATT Customs Valuation Code and will implement the transaction value system by January 1, 1985. The Board has not received any communication from the Minister either altering the original terms of reference or suggesting that the methodology adopted to identify or calculate the

(5) See Appendix 'A'.

possible tariff rate adjustments should be modified in any way. In the light of this correspondence, the staff does not believe that any major modification of the scope or methodology adopted to date can be justified. The final decision on this issue, of course, rests with the members of the Tariff Board and not with the staff.

In addition to these proposals for a major modification or reinterpretation of the terms of reference, some participants have suggested that the background paper is overly restrictive because it only deals with value for duty rulings and ministerial prescriptions which were in effect at the beginning of April, 1979. Some participants suggested that valuation actions up to the time of the completion of the Board's report should be included. While this would be technically possible it would, of course, require the Board to recommend tariff rate changes on some items without affording the public their right to comment on the impact of such changes. It has also been suggested that the Board should recommend tariff rate adjustments to reflect the impact of all valuation actions up to December 31, 1984. Any attempt by the Board to calculate such adjustments in advance is logically impossible.

The problem is that in carrying out any sort of calculated conversion exercise a common base date must be established in advance. The Board has proceeded on the assumption that the base date for this exercise has been clearly established as the beginning of April, 1979. This date was mutually agreed to by Canada and the other signatories when the Customs Valuation Code was signed.

Some participants have argued that the fair market value system provides a general deterrent to foreign exporters against unfair pricing practices. It has been suggested that the existence of the fair market value system increases declared fair market values by 5 to 10 percent generally for all imports and as much as 50 percent for some specific goods. It has been proposed that if Canada cannot make, or calculate, an adjustment for this deterrent effect then the proposed legislation should not be implemented.

The staff understands the specific concerns underlying this proposition but is not convinced that the concerns can be supported by factual analysis. For this proposition to be valid it would be necessary for all foreign exporters to have perfect knowledge of the Canadian fair market value system and that they then comply totally with the system on a voluntary basis. These conditions are not borne out by the information on customs valuation provided to the Board by National Revenue, Customs and Excise. A review of the valuation case cards shows that a major proportion of all cases were simply responses to foreign exporters' and Canadian importers' requests for information because they did not know how the system applied to their products. Therefore, a deterrent effect across the board cannot be due to the existence of perfect knowledge about the system. The existence of numerous rulings and enforcement actions negates the proposition that there was voluntary compliance even in those cases where exporters understood the system. The deterrence argument implies that when the transaction value system is introduced there will be an immediate across the board decline in selling prices, and therefore in values for duty, of between 5 and 10 percent for all dutiable goods exported to Canada. For this to occur one would have to assume that the provisions of the fair market value system are the single most important factor taken into account when foreign exporters establish selling prices to Canada. In his response to the CMA the Minister has stated that he would be most interested if data substantiating such a deterrent effect could be presented to the Board.

Finally, it has been proposed, both explicitly and implicitly, that if the Board cannot calculate and recommend specific adjustments for each and every action taken under the present fair market value system, including the alleged deterrent effect, then the terms of the reservation cannot be met and the Board should recommend to the government that the proposed transaction value system not be implemented. In response it must be pointed out again that the government has signed the Code and is committed to implementing the transaction value system by January 1, 1985. The Minister's letter of reference states that "The primary objective of the second phase of the Board's study is to provide advice on what, if any, tariff adjustments would be required to maintain the same level of tariff protection or to ensure that duties collected would not decline significantly".⁽⁶⁾ The Board has not been requested to provide advice on what adjustments would be necessary to compensate exactly for every valuation action under the present fair market value system. Further, the Minister recognizes in the letter of reference that some of the problems which are currently dealt with under the fair market value system might better be dealt with under other instruments of import policy.

The question of compensatory tariff rate adjustments has been approached in a pragmatic manner and on the basis of actual data as opposed to hypothetical possibilities. In the first place, since the Board has not at any time been asked to compare the fair market value and transaction value systems, the staff have not attempted to determine whether the net losses might exceed, equal or be less than the net gains. It must be accepted that there will be specific losses for which there can be no directly corresponding compensatory adjustments. Some such losses may be offset by provisions of the new system but these will only be measurable after the fact. By the same token there will be gains in the protection afforded by the transaction value system which have not been provided by the fair-market-value system. It would seem to be logical that if exact upward adjustments were to be made for every specific loss due to the change in valuation systems then equity would demand that there should also be specific downward adjustments to compensate for gains. The question is whether this sort of a result was ever envisaged. The staff has proceeded on the assumption that there will be numerous minor losses and gains, most of which will never be clearly identified. In addressing the problem of compensatory tariff rate adjustments an attempt has been made to identify those value for duty rulings and prescriptions in effect at the beginning of April, 1979 which were providing a measurable and commercially significant degree of tariff protection.

In summary, therefore, the staff do not see the possibility for a major change in the focus, scope or methodology of Reference 159, Part II concerning possible tariff adjustments which should be made to compensate Canada for losses in protection currently provided by the fair market value system and which will not be provided after January 1, 1985, under a transaction value system. It is recognized that this will be criticized by some sectors of the business community. Indeed, these criticisms have already been made to the staff, to the Board and to the Minister.

(6) Supra, p. 2. Underlining added for emphasis.

CHAPTER II

SUBMISSIONS TO THE BOARD

Purpose of Summaries

The purpose of this chapter is twofold. First, it is designed to ensure that the problems and concerns presented to date have been properly understood and taken into account by the staff. Second, the summaries are presented here to refresh the minds of those involved with the developments so far and to introduce new participants to the major issues before the Board. Participants are reminded that, when the Board's final report is submitted to the Minister of Finance, the total package will include copies of all formal submissions and the transcript of the public hearings. Subsequently, when the Minister presents the Board's report to Parliament a full copy of the evidence will be lodged with the Library of Parliament for the public record. The only evidence retained by the Board will be private commercial documents which have been submitted on a confidential basis as provided for by section 5(10) of the Tariff Board Act.

The Board received thirty-five submissions from a wide variety of associations and companies concerning the possible tariff rate adjustments which might be appropriate or necessary when Canada adopts the transaction system of valuation. There were 20 submissions from major industry and trade associations. Fifteen individual firms also made representations with respect to products which they produce. Six of these were from companies concerned with the manufacture or sale of textiles and related goods. Various specific chemicals, plastics and rubber products were also the subject of several detailed submissions.

The following is a Tariff Board staff summary of written submissions and oral evidence presented to the Board by interested parties at the public hearing held June 14-16, 1982. The staff have attempted to present fairly the main issues raised by each participant. It is recognized, however, that these summaries may have overlooked specific issues of significant concern to individual participants. It is also possible that the summaries may misinterpret some positions or may change the emphasis or tone which participants intended. The staff invites corrections and further detailed comments on the issues from interested parties.

AMERICAN STANDARD

American Standard, a Division of Wabco-Standard Inc., made representations concerning plumbing fixtures entering under tariff item 28900-1. The company was particularly concerned about future imports under this tariff item from the United States and Mexico and noted that in the background paper only toilet bowls were mentioned, that there was nothing about other related bathroom fixtures.

American Standard expressed the opinion that the introduction of the transaction value system would be a signal to foreign producers that dumping goods onto the Canadian market would be much easier in future. The company had doubts about the effectiveness of the present anti-dumping legislation to handle the problem.

AUTOMOBILE IMPORTERS OF CANADA

The Automobile Importers of Canada (AIC) is a group within the Canadian Importers Association Inc. representing 14 foreign car manufacturers. The AIC was opposed to any upward adjustments in the tariff rates covering imported automobiles. The AIC argued that some imported cars are purchased because of a special appeal, particularly luxury or sports cars, and thus are not directly competitive with Canadian production. Also, the importation of such automobiles will be by related parties. As a result, transaction values may be questioned and values for duty may be adjusted where appropriate. The AIC maintained that an additional tariff rate increase would not be warranted in such circumstances.

As the difference between the fair market value and the selling price has been diminishing since 1979, the AIC concluded that the Board should not rely on data as it existed in 1979 in order to determine what adjustments should be made in 1985.

CANADA STARCH COMPANY INC.

Canada Starch Company Inc. registered its concern about tariff item 5500-1 covering grain corn and queried what effect a move to a transaction value system might have on this commodity. The company noted that the rate of duty will be reduced annually to 5¢/bushel by 1987 and not remain at 8¢/bushel as indicated in the background paper. Canada Starch stated that the present specific rate of duty was easier to apply than would be the case with an ad valorem rate.

CANADIAN APPAREL MANUFACTURERS INSTITUTE

The general position taken by the Canadian Apparel Manufacturers Institute was that it did not seek any tariff rate increases to compensate for the loss of either value for duty rulings or ministerial prescriptions when the new valuation system will be introduced. Although the Institute was still concerned about the problems raised by it in respect of Part I of this reference (acceptance of transaction values for sales below cost, valuation of merchandise imported from state-controlled economies, and valuation of other-than-prime-quality or distress merchandise), its members thought that losses due to the termination of value for duty rulings and ministerial prescriptions may be offset to some extent through lower cost and/or greater availability of raw materials. The apparel industry imports about 50 per cent of its fabric needs, not necessarily because of price, but also because of quality, design, construction, and uniqueness. The Institute considered that it would be inconsistent and irresponsible to look for increased tariffs on imported apparel while opposing similar increases on imported fabrics.

The Institute noted that the effect of most of the ministerial prescriptions of interest to it had been diluted and while it would prefer to keep them in place, it could not devise a method of doing this that is not prohibited by the GATT Valuation Code.

The apparel industry regarded the imposition of quotas and the provisions of the Multifibre Agreement as far more important to it than trying to reinforce each and every other method of insulating itself from the very intense, predatory competition common to its markets.

CANADIAN ASSOCIATION OF MANUFACTURERS OF MEDICAL DEVICES

The Canadian Association of Manufacturers of Medical Devices (CAMMD) declared itself to be generally in favour of the proposed change to the transaction system of valuation. However, it considered the Board's sample period of one year for measuring the impact of the change to be too short and recommended that at least two years of imports be studied. The Association expressed concern that under the new system there is great potential for delays and extra work due to lengthy investigations into imports between related firms. It also asked the Board to clarify what steps might be taken to monitor whether related-party importers were gaining an unfair competitive advantage over importers operating at arm's length where unreasonably low transaction values might be used. Finally, the Association strongly recommended that transportation charges not be included in determining the value for duty. Since these charges can be highly variable, the Association argued that transportation cost information may cause confusion.

CANADIAN BUSINESS EQUIPMENT MANUFACTURERS ASSOCIATION

The Canadian Business Equipment Manufacturers Association (CBEMA) represents 80 manufacturers of a wide variety of business equipment including data processors and peripherals, typewriters, copiers, calculators and other office machines. The Association strongly endorsed a rapid adoption of the proposed valuation system. In its presentation CBEMA emphasized that the Tariff Board's analysis and recommendations in 1977 on Reference 150, Computers and Related Telecommunications Equipment, were still valid and working well. The Board's recommendation that a single tariff item be created for data processing equipment and parts had been implemented in 1980 with a low rate of duty. CBEMA's major concern with the proposed valuation system was that the calculations presented in the background paper for the loss of revenue and tariff protection were based on 1979 tariff classifications. The Association argued that any tariff rate adjustments should be based on the 1980 tariff classification.

CBEMA questioned the validity of using invoice prices to determine value for duty as was done in the background paper, since most of the industry's imports were from related companies. It acknowledged, however, that any problems with pricing or valuation could be adequately dealt with under the related party provisions of the proposed legislation.

The Association recommended that the classification system currently in effect for data processing equipment be retained under the new valuation system. Furthermore, there should be no increase in the rate as even a slight increase might result in requests for compensation.

CANADIAN CARPET INSTITUTE

The Canadian Carpet Institute supported the Canadian Textile Institute's submission and urged that Canadian carpet imports continue to be valued under the existing fair market value system until the next round of multilateral trade negotiations. The Institute was of the opinion that without ministerial prescriptions Canadian carpet producers will be far more vulnerable in future to imports particularly from the United States. In the past when the economic cycle has been low and when the value of the Canadian dollar has been relatively high the carpet industry's problems have been more acute. In addition, by 1987 the carpet tariff will be reduced and the 5¢/square foot specific duty will have been eliminated.

The Institute attributed the fact that the Board's background study did not find any American carpeting goods subject to valuation rulings to the present valuation system having acted as a deterrent to undervaluation by foreign suppliers. The Institute estimated that approximately 20-30 per cent by volume of carpet imports are transactions between related parties.

THE CANADIAN CHEMICAL PRODUCERS' ASSOCIATION

The Canadian Chemical Producers' Association (CCPA) supported the position of the Canadian Manufacturers' Association. The CCPA also concluded that with the introduction of the transaction value system the level of tariff protection gained by Canada in multilateral negotiations on its products will not be retained, but will be unilaterally reduced without compensation. The CCPA was of the opinion that a tariff rate adjustment could not compensate for the loss of protection resulting from the loss of valuation rulings and ministerial prescriptions. The Association urged the Board to confirm these facts in its report to the Minister.

The CCPA argued that a Canadian valuation system which was not in strict conformity with the GATT Valuation Code would be more acceptable to Canada's trading partners than the tariff rate increases required to maintain the same level of protection for those goods subject to rulings and prescriptions. Such increases would inadvertently encompass many more products and would be rejected by the other GATT signatories.

The Association charged that the Board's staff equated maintenance of revenue with maintenance of the level of tariff protection. The CCPA considered this completely inappropriate and asked the Board to recommend that the government maintain a provision for rulings and prescriptions. If Canada's trading partners would not agree to this modification, the Association proposed that the government retain the present fair market value system.

CANADIAN COUNCIL OF FURNITURE MANUFACTURERS

The Canadian Council of Furniture Manufacturers represents three associations whose members are primarily producers of residential furniture. The Council's position, like the Canadian Manufacturers' Association, was that Canada's agreement to implement the GATT Customs Valuation Code is subject to the condition of being able to increase tariffs to compensate for all losses of protection. In the Council's opinion this condition cannot be met and, as a result, Canada is not committed to adopting the Code. The Council recommended implementing the transaction value system for those items where there would be no loss in protection, but postponing full implementation until the next round of GATT multilateral trade negotiations. In the interim, Canada should continue to issue valuation rulings as necessary.

The Council's major concern was periodic importation of low-priced merchandise from the United States at times when US demand is soft. This is a particular problem since 65 per cent of Canada's furniture imports come from the US. The Council contends that the amount of protection at risk is greater than indicated in the background paper because 1978 data were used for the calculations. During this period the US market was relatively strong and the Canadian dollar declining. As a result, the level of protection provided by the fair market value system may have been understated for furniture imports. In addition, the Council argued that the formula used in the background paper to calculate tariff adjustments is more related to the replacement of lost government revenue than a measure of tariff compensation for lost protection. Finally, the lack of specific information on the valuation rulings in the background paper makes it difficult to identify the products most directly affected. In the Council's view, adoption of the new valuation system will leave the Canadian market liable to sporadic dumping, for example, of less-than-prime quality products or end-of-season clearances. The Council argued that recourse to the anti-dumping system does not provide an effective solution for these problems.

CANADIAN FEDERATION OF INDEPENDENT BUSINESS

The Canadian Federation of Independent Business (CFIB) represents about 55,000 members in the service, retail, and small manufacturing industries. The Federation's philosophy is one of free trade and it opposed any tariff rate increases designed to compensate for losses incurred by switching from the fair market value system to the transaction value system. The CFIB stated that the proposed new system will place significant burdens on its members. It found the proposed regulations even more complex than expected and argued that as a result of these complexities, the transaction value system itself will provide a measure of protection.

THE CANADIAN HORTICULTURAL COUNCIL

The Canadian Horticultural Council presented the concerns of the Canadian cut-flower industry at the prospect of losing the protection of ministerial prescription D46-10. This prescription was re-introduced in 1980 and applies to carnations, chrysanthemums and roses imported from all countries. Although the USA and Colombia are the major suppliers of cut flowers into Canada, the Council was particularly concerned about Colombia and claimed that Canadian producers faced unfair competition from Colombian exports even with the value for duty provisions now in force.

The Council maintained that ministerial prescriptions are the only safeguard against third world or state-controlled economies and the elimination of these will have disastrous effects on the Canadian cut flower industry. The Council saw two problems if tariff rate adjustments were implemented to compensate for any loss in current protection. First, it would be extremely difficult to determine a fixed rate. Second, there would be very little probability that Canada's trading partners would agree to an increase. The Council noted that a rate adjustment would have to be applied uniformly to all trading countries including non-signatories of the GATT. As a result of these problems, the Council was convinced a reduction in tariff protection would be unavoidable.

The Council proposed two alternative solutions in addition to a higher tariff rate. First, a provision in Canadian legislation to permit ministerial prescriptions to be used for the valuation of goods from non-signatories of the

GATT. The second alternative was to improve and streamline the current surtax provisions to meet the unique needs of the horticultural industry. According to the Council, the perishable nature of the industry's commodities, highly volatile production variations and seasonality are prime reasons that such measures as countervailing and anti-dumping legislation are of limited value to the industry.

The Council asked the Board to consider the ministerial prescription applicable to the industry although it came into effect after 1979 and to create a separate tariff item for carnations, mums and roses, removing them from tariff item 7915-1.

CANADIAN IMPORTERS ASSOCIATION INC.

The Canadian Importers Association (CIA) represented more than 800 member firms before the Board. The Association told the Board that its members assumed the GATT Valuation Code will be adopted by Canada precisely as conceived and negotiated. Further, they totally rejected the concept put forth by other participants that Canada can and should adopt the transaction value system only for commodities which are of little concern to Canadian producers, but retain the fair market value system and ministerial prescriptions for specific goods or classes of goods. The Association maintained that any valuation system should be entirely neutral and should not be used as a means of protection for domestic industries. The CIA disagreed with the suggestion favouring retention of the fair market value system as a first line of protection against dumping. The Association argued that anti-dumping and value for duty are two separate and distinct concepts and noted that Canada's proposed import policy contains adequate measures to take care of all of the problem imports of concern to Canadian industry.

The Association took the view that the Canadian government should be confining itself to those areas where tariff protection is at issue and suggested that the Minister's reference to loss of revenue was completely irrelevant.

The Association urged the Board to exercise care and fairness in its recommendations. Specifically, it recommended that no tariff rate adjustments be made on the significant portion of Canadian imports involving related party transactions, nor in those cases where rulings involve goods which are not produced in Canada. The Association also recommended that tariff rate adjustments should be considered only where value for duty rulings, ministerial prescriptions or similar evidence conclusively establishes the existence of actual tariff protection.

The Association maintained that its brief was not so much critical of the methods used in the background paper as it was an attempt to point out the difficulties of relying on a sampling technique, necessarily arbitrary, as a basis for proposed tariff rate adjustments. It noted that there is no way to appraise the degree of tariff protection lost until one has the facts and the 1979 data are not likely to be very meaningful in 1985 when the transaction value system is implemented. The Association asked the Board to use data after April, 1979, to make a proper determination, but only for those rulings and prescriptions already in place in April, 1979.

The Association expressed its frustration at the number of ministerial prescriptions which have never been made public and on which the affected parties cannot make representations. It maintained that, in addition to being arbitrary, there is no recourse for appealing their use before either the courts or the Tariff Board and there is no consultation with either the exporter or importer in formulating their basis. With the introduction of the new system, these problems will disappear. The Association was satisfied that the proposed system for alternate valuations provides for on-going and complete consultation between the

importer and National Revenue. However, the Association suggested very strongly that the Board should consider the legality of some of the ministerial prescriptions where third party comparisons have been applied outside the specified limits of the law.

The Association was agreeable to specific surcharges being applied to specified goods from named sources as a procedure to provide an equitable and non-disruptive compensatory mechanism for certain of the country-specific prescriptions. The CIA declared this procedure would be preferable to a rate adjustment for the current tariff item based on a weighted averaging of all imports of a broader class of goods.

The Association recognized that for some of the ministerial prescriptions adjustments could be made legitimately by creating a new tariff item so that there would be no impact on previously non-affected suppliers.

The Association supported Honda Canada Inc. in asking the Board to look into the question of possible tariff reductions and to make recommendations in any area where reductions might be indicated.

CANADIAN LUMBERMEN'S ASSOCIATION

The submission from the Canadian Lumbermen's Association was made on behalf of a constituent group, the Canadian Hardwood Plywood Association. Concern was expressed that imports of plywood from the United States entering under tariff item 50715-1 might be priced much lower under the proposed transaction value system than under the current fair market value system. The Association maintained that the double impact of low pricing practices and a lower import duty would be quite damaging to Canadian producers. The only form of protection in such cases would be the Anti-dumping Act and the Association considered that producers might have difficulty obtaining the necessary evidence of dumping.

THE CANADIAN MANUFACTURERS' ASSOCIATION

The Canadian Manufacturers' Association (CMA) approved the transaction value system of customs valuation in general terms, but recommended that it be implemented only in a modified form in certain instances. The CMA contended that since it is not possible to adjust tariff rates to maintain the same degree of tariff protection as now prevails under the fair market value system, Canada is no longer bound to implement legislation in strict conformity to the International Valuation Code. The CMA recommended that Canada should adopt the transaction value system for the majority of imports which were not and would not be affected by the fair market value system, but reserve the right (prohibited by the Code) to enforce existing value for duty rulings or prescriptions and to make new rulings as necessary. In particular, Canada should retain the ability to issue retroactive value for duty rulings in cases of sporadic dumping.

The CMA maintained that under the transaction value system Canada will achieve a more efficiently administered system but, even with its suggested modification, will still lose considerable tariff protection. The Association judged the level of tariff protection at risk to be much greater than that suggested by the figures in the background paper. For example, eliminating products where affected imports accounted for less than 40 per cent of total 1978 imports ignored the fact that some of these imports may have amounted to less than 40 per cent because they were the subject of a prescription. Similarly, where no affected entries were found, the CMA argued that rather than this being a sign of negligible impact it might indicate a valuation ruling sufficiently effective to inhibit

imports. The CMA regarded the present valuation system as having a built-in deterrent effect since the fair market value can be checked. The CMA recognized that the deterrent effect cannot be accurately measured, but argued that this is no reason to ignore the reduction in the level of tariff protection which may result from implementation of the transaction value system. Further, the CMA considered that most fair market values appearing on invoices contain an element of prudence and this element will disappear under the transaction value system. The CMA estimated the drop in value to be from 5-15 per cent depending on the commodity.

In the Association's view another deficiency in the background paper was that none of the examples in it deal with sporadic dumping. Canada is particularly vulnerable to this problem, but there will be no defense against it under the transaction value system. The CMA argued that the anti-dumping system can do nothing about sporadic dumping because the administration, particularly in respect of timing, is inadequate.

The CMA was firmly opposed to across-the-board tariff increases to preserve the level of revenue collected as this would do nothing to maintain specific levels of protection but could attach more duty to goods that were not previously penalized. Creating a new tariff item was seen as a possible solution to this problem. The Association interpreted the reference in the Minister's letter to duties collected as intended to indicate only the duties collected on imports on which there were specific valuation rulings. The Association stressed that maintenance of revenues is not the same as maintenance of protection and should be of secondary importance since the purpose of a valuation action is to provide protection.

The CMA asked the Board to take into consideration revisions to valuation actions made since 1979 to pre-1979 prescriptions in order to more closely reflect commercial reality at the present time. The Association suggested that an even better policy would be to adjust for all prescriptions issued before December 31, 1984, because the Canadian reservation makes no mention of this date.

In the CMA's view, formal and complete implementation of the proposed valuation system would lead to a considerable reduction in levels of tariff protection, very little of which could be recovered by rate adjustments. Such a course of action was unacceptable to its members.

CANADIAN TEXTILES INSTITUTE

The Canadian Textiles Institute (CTI) represented the primary textile industry. In 1981 the industry had factory shipments worth about \$6 billion, with 45 percent of its output being sold to the apparel industry and the rest going into home furnishings and industrial products. The CTI described the industry as complex and interdependent and noted that imports from all sources provide a significant level of total Canadian consumption of textiles. Developed countries provide 82 percent of Canada's primary textile imports with almost 70 percent of these imports originating in the USA. Because of its small size relative to the US textile industry, the Canadian industry has special problems which are compounded by the comparative openness of the Canadian economy. The CTI maintained that the Canadian industry is particularly vulnerable to market disruptions from disposal-priced goods resulting from over-production, style changes or seasonal clearances and from imports of goods of less-than-prime quality.

The chief concern of the CTI was the proposed loss of ministerial prescriptions as these have been effective in dealing with many of the industry's particular import problems. In the Institute's view equally effective alternatives did not appear possible. The CTI, along with other participants at the public

hearing, argued that there is a deterrent effect due to the ministerial prescriptions which cannot be compensated for by tariff uplifts. Valuation investigations in foreign countries have a spin-off effect and it is impossible to quantify the loss of this type of protection. The Institute argued that the industry's problems are not easily or successfully dealt with by anti-dumping legislation because they are style-related, sporadic and of short-term duration. The CTI claimed that the anti-dumping system in Canada has provided effective relief from only a minor fraction of unfairly priced textile imports and that the valuation legislation and investigations have always been the first bulwark against dumping for the textile industry.

According to the CTI, textiles are a special case in international trade and are recognized as such by the signatories of GATT, the Multifibre Agreement being proof of this. The Institute maintained that under the Canadian reservation to the GATT agreement on customs valuation Canada is not obliged to implement the agreement since this cannot be done without reducing the level of tariff protection previously granted to the Canadian industry. The CTI requested that the proposed legislation should not be used for valuing textile imports into Canada and recommended that the existing fair market value system be retained for this purpose until the next round of multilateral trade negotiations. It also recommended that the treatment of freight in the existing system continue unchanged.

The CTI found that the whole approach of the background paper was to sweep the Canadian reservation under the rug and to ignore the deterrent effect of the fair market value system. It contended that the implementation of the proposed transaction value system raises a whole range of problems in addition to customs valuation which have not been adequately dealt with in the background paper. Strict numerical uplifts resulting from a simple averaging across a whole tariff item would not be satisfactory, particularly when applied to problems not in the normal course of trade.

The Institute stated that no major prescriptions of interest to the industry have been issued since April, 1979, but many of those of interest issued prior to that date have since been modified. In Table II of the background paper, the ministerial prescriptions dealing with apparel were of indirect interest to the CTI. However, the prescriptions in Table III on cotton fabrics, worsted fabrics, converted fabrics, cotton corduroy piece goods, work gloves, elastic braid and ex quota shipments of cotton yarn were of direct interest to its members.

The CTI expressed its support for two of the recommendations made by the Tariff Board in its report on Part I of this reference. It agreed wholeheartedly with the recommendation that National Revenue take a much more active role in dealing with special import problems. For this to happen, the CTI noted that the government would have to issue directives to that effect. It also agreed with the recommendation that ministerial prescriptions should continue to apply for imports from state-controlled economies.

The CTI acknowledged that the worst instances of the problems it cited might be dealt with under a Special Import Measures Act, but warned that it should not be assumed that such an Act will effectively address the majority of these problems.

The Institute supported the position taken by the Canadian Manufacturers' Association and suggested that Canada adopt the valuation agreement for those products (other than textiles) where the problems addressed by valuations and ministerial prescriptions are non-existent or of little importance to domestic industry.

CARSILCO INTERNATIONAL LIMITED AND FLAM TEXTILES LIMITED

Carsilco International Limited and Flam Textile Limited are importing wholesalers of textile fabrics who supported the position of the Japan Silk and Synthetic Textile Exporters Association. They oppose any tariff rate increases on textile yarns or fabrics and, in particular, the proposals for such increases by Dominion Textiles Inc., DuPont Canada Inc. Fibres Group, and the Canadian Textiles Institute.

CLEYN & TINKER INTERNATIONAL

Cleyn & Tinker International, representing worsted and woolens producers, asked the Board to remember that not all of the Canadian textile industry is involved with or worried about imports from the United States. For those in the worsteds and woolens sector of the textile industry the particular concern is with imports from the Pacific rim, i.e., Japan, the Republic of Korea, the People's Republic of China, and more recently, from certain South American sources.

DOFASCO INC.

Dofasco Inc. submitted a brief supporting the views expressed by the Canadian Manufacturers' Association. Dofasco representatives participated in the preparation of the CMA submission but the company reserved its right to address specific issues at a later date.

DOMINION TEXTILE INC.

Dominion Textile Inc. supported the positions presented by the Canadian Manufacturers' Association and the Canadian Textiles Institute. The company also declared its interest in the continuing viability of the Canadian apparel industry.

Dominion Textile had been unable to quantify the loss of tariff protection it anticipated would result from adoption of the proposed transaction value system from the data available. The company concluded, however, that only a minor part of the loss had been taken into consideration in the background paper. It maintained that the indirect impact of valuation reviews and ministerial prescriptions could not be measured precisely or even estimated and thus the full protective impact of the current valuation system was not reflected in the background paper.

Dominion Textile recommended the adoption of the transaction value system where the impact of the change in valuation is not significant. However, in certain sectors, such as textiles, where tariffs are relatively high and where ministerial prescriptions have been used frequently in the past to combat end-of-season close-outs, sales of sub-standards and seconds and periodic predatory selling, the company recommended that Canada retain the fair market value system until such time as compensation can be negotiated with other countries for the full loss that would result from the change.

One of the major problems facing Dominion Textile is that most Canadian imports of styled cotton and polyester/cotton woven fabrics originate in the United States. Since much of the United States has an earlier spring and summer, US producers are thus encouraged to dispose of their seasonal mistakes in Canada. Five per cent of US production of a particular fabric generally equals the entire Canadian market requirements and these disposal sales can be very damaging. Dominion Textile asked the Board to consider the deterrent effect of the fair market value system in such pressured circumstances. The company claimed that

frequent valuation reviews by Revenue Canada has ensured that goods are priced at proper fair market values to avoid retroactive revaluation. This has contributed up to as much as a 15 per cent increase in the stated value for duty. The company had not found anti-dumping actions to be as effective. In addition, Dominion Textile maintained that more than 50 per cent of Canada's imports in primary textiles are from developed countries and for these goods, the tariff uplifts required to compensate for the loss of the deterrent effect of the present valuation system would have to be much larger than indicated in the background paper.

Dominion Textile did not think that creating separate tariff items for some goods would be useful. It would not have the effect of a value for duty investigation which could put foreign producers and related importers on their guard against understating the value of their transactions. The company also thought rate adjustments could not be calculated at this time and would be unsatisfactory in any case.

DU PONT CANADA INC. - CHEMICALS GROUP, PLASTICS AND FILMS GROUP

Du Pont Canada Inc. made a submission on behalf of its Chemicals Group and the Plastics and Films Group. The products of special interest to these Groups are polyamide film, various polyethylene products, woven polyolefin fabric items, fluorocarbons and adipic acid.

Du Pont claimed that each these items had, at one time or another, come under significant import pressure due to foreign excess capacity, dumping, disposal of obsolete or off-quality goods, or a selling price lower than fair market value in related party transactions. Currently there were no problems with imports of the chemicals and plastics, but Du Pont considered the woven polyolefins closer in nature to textiles and contended these items were subject to the same problems as its textiles (see below). However, the company expressed its concern over the possible loss of protection for all the above-mentioned products. Du Pont claimed an increase in the tariff rates or the creation of separate tariff items would be necessary to compensate for this loss.

Du Pont also expressed support for the more general brief submitted by the Canadian Manufacturers' Association.

DU PONT CANADA INC. - FIBRES GROUP

Du Pont Canada Inc. also made a presentation to the Board on behalf of its Fibres Group which manufactures a variety of synthetic fibres and yarns. In 1981 the sales of these products accounted for 34 per cent of the company's total sales of \$1.139 billion. Du Pont Fibres Group strongly supported the position taken by the Canadian Manufacturers' Association and by the Canadian Textiles Institute stressing the capability of the current valuation system to offer domestic producers protection particularly against dumping, through the use of ministerial prescriptions and the ability to conduct valuation investigations. Du Pont maintained that the present valuation system is the first defence against dumping, and that the proposed Special Import Measures Act has no answer to the loss of ministerial prescriptions nor to the problem of second-level dumping which is common to the textiles industry.

Du Pont produced evidence from its own records of imports from its US parent showing transaction prices below fair market values. The company maintained there is a well established two-tier pricing system for fibres and a switch to a

transaction system of valuation will inevitably result in a loss of tariff protection. Du Pont recommended that new tariff items be created based on CITC commodity code descriptions 366-39-79, 366-39-80, 366-99-45 and 246-37-90 and proposed higher rates of duty for these.

Du Pont also asked the Board to look at valuation rulings which came into effect after 1979 and cited a 1980 investigation that for commercial reasons had not been instituted earlier although the undervaluation had existed prior to 1980.

ELECTRICAL AND ELECTRONIC MANUFACTURERS' ASSOCIATION OF CANADA

The Electrical and Electronic Manufacturers' Association of Canada (EEMAC) represents 250 manufacturers whose products fall into six major sectors: heavy electrical equipment, wire and cable, major appliances, small appliances, electronic products, and miscellaneous products. Canada is a major producer and consumer of electrical energy. EEMAC stressed that Canadian manufacturers operate in a climate of intensive price competition from imports, which in many cases have been sold below fair market value, and therefore its members will face a major loss of tariff protection with implementation of the transaction value system. The Association maintained that Canada's trade balance has deteriorated in each product sector since 1965 and that this was partially attributable to the tariff concessions made by Canada in the Kennedy Round. The trade deficit for 1980 in electrical products alone was \$1.1 billion even though exports exceeded \$600 million. EEMAC claimed the domestic industry faces tariff reductions by 1981 of up to 44 per cent as a result of the Tokyo Round tariff concessions.

A major problem cited by EEMAC is that Canadian producers face significant non-tariff barriers in every important international market including the USA, the EEC, and Japan. These three countries account for more than 80 per cent of world production of heavy electrical equipment and they have either refused to open their markets for heavy electrical apparatus and telecommunications equipment under the GATT Agreement on Government Procurement or else they have domestic policies which negate the intent of the code, e.g., Buy American legislation. Meanwhile the Canadian market is open to freewheeling international bidding which encourages dual-pricing. Dual-pricing is a practice whereby foreign producers sell at high prices in a closed home market while selling at low prices in an export market like Canada. EEMAC argued that the fair market value system provides some protection against dual pricing and this will be eliminated with the adoption of the transaction value system.

The Association was disappointed with the Board's background paper and considered that it reflected a narrow and unrealistic view of the prospective loss of tariff protection facing the industry. An analysis by the Board of the full extent of the spreads between fair market value and transaction value had not been included. EEMAC maintained that the possible adjustment figures indicated in the background paper were inappropriate since only imports from the USA were shown to contribute to the prospective loss of tariff protection. EEMAC cited 14 anti-dumping cases which showed valuation problems with Europe, Japan, the USSR, and various low-wage countries. The Association noted as an example one tariff item with a possible upward adjustment of 0.001 per cent where imports from the US in 1978 accounted for only 13 per cent of the total while the EEC and Japan had accounted for 39 and 34 per cent respectively. In another case EEMAC contended that one contract alone could produce an impact a thousand times greater than the possible adjustment suggested in the background paper. The Association argued that the Board's procedure washed away any real effect of the value for duty rulings directed at a particular exporter or exporting country by diluting them with a much

larger volume of transactions where the selling price had been accepted as the value for duty. Tariff item 44524-1 was cited as a tariff item where the possible adjustment figure grossly understated the tariff protection to be lost if the proposed legislation is implemented. EEMAC maintained that the deterrent effect of Canada's valuation system is a factor in a foreign competitor's bidding and, therefore, is part of the tariff protection of the industry. This aspect of the present valuation system had been ignored in the background paper.

To illustrate the international trading practices affecting its members, EEMAC provided the Board with some specific examples of dual-pricing. One of these showed 18 actual export transactions of heavy electrical equipment from one country and nine winning bids on similar equipment in that country's home market. The data showed an average difference between export price and domestic price of 42 per cent.

EEMAC requested that the Board consider either including all the products of interest to its members in an exemption to the Valuation Code, as proposed by the Canadian Manufacturers' Association, or consider a much finer subdivision of the tariff schedule in combination with selective tariff rate increases to adjust for the anticipated loss of tariff protection. EEMAC also asked the Board to take account of two factors omitted from the possible adjustment figures outlined in the background paper. These factors are the prevalence of large differences between fair market value and transaction value in the industry and the deterrent effect of the valuation system on exporters dumping in the Canadian market. The Association urged the Board to obtain and analyse all relevant information relating to the margins of dumping in the 14 anti-dumping cases cited. The submission stated that the value of electrical and electronic products to be supplied to major projects in Canada over the next 18 years has been estimated to be \$40 billion. In light of this EEMAC argued that it is essential for the Canadian government to provide effective legislation against predatory international trading practices and to ensure that the adoption of the Valuation Code entails no further loss of tariff protection.

HOME FURNISHING INDUSTRIES ASSOCIATION

The concerns of the Home Furnishing Industries Association were roughly similar to those of the Canadian Apparel Manufacturers Institute. The Association stated that, as the representative of the major non-integrated producers of draperies, bedspreads and curtains, their main problem was with merchandise sold at distressed prices from the USA. The Association noted that the prescription for other-than-prime quality merchandise will be lost under the transaction value system.

The Association did not propose any tariff rate increases on its members' products and it opposed any tariff increases on imported textile fabrics. However, in the event of tariff rate increases being proposed for its members' inputs, the Association may wish to change its position with regard to their own products.

HONDA CANADA INC.

Honda Canada Inc., an importer of gasoline engine powered vehicles and equipment, is a member of and fully supported the presentation made by the Motorcycle and Moped Industry Council and the Canadian Importers Association. For its own part Honda argued that there should be no upward adjustment in tariff rates as a result of the changeover to the new system for its products. Honda noted that in the background paper the declared selling price was generally interpreted as being

equivalent in future to the transaction value. However, Honda argued that for most of its products the declared selling price would not necessarily be acceptable as the transaction value since these are transactions between related companies. In such instances a computed method of valuation could result in even higher values than anticipated in the background paper. Thus, the tariff adjustments in the background paper may not be accurate.

Honda contended that the fair market value system provides values for duty that closely approximate transaction values between related parties. In support of this Honda cited statements made to the Board by the Canadian Manufacturers' Association, the Japan Silk and Synthetic Textile Exporters' Association, and the Rubber Association of Canada, that there will be no need for an upward tariff rate adjustment on those commodities which are traded between related parties.

Honda also agreed with a point made by several other participants that the calculations should not be limited to 1978 customs entries but should include all entries and rulings made to December, 1984. For those cases where the computed method of valuation for transactions between related parties results in values higher than the current fair market value, Honda proposed that the Board recommend a tariff rate reduction.

Honda imports products under seven different tariff items, but expressed concern particularly for tariff items 43803-1 and 43839-1 covering automobiles and motorcycles respectively.

THE JAPAN SILK AND SYNTHETIC TEXTILE EXPORTERS' ASSOCIATION

The members of The Japan Silk and Synthetic Textile Exporters' Association export textile yarns or fabrics to Canada. According to the Association, while others may benefit significantly from lower tariff rates under the new valuation system its members likely will not since selling prices between related companies will not be accepted automatically by Customs officials. Related party transactions account for approximately 60 per cent by volume of the textiles exported by Association members. The Association expressed the view that their transactions will be subject to a number of tests or procedures which seem to be designed to maintain the protection offered by the existing Canadian valuation system.

The Association noted that DuPont Canada Inc. Fibres Group had proposed increasing tariff rates on certain nylon fabrics and yarns, and yarns containing spandex. It was noted, however, that Dupont based its calculations for the increases on undervaluation detected on its own imports from its parent company in the USA. The Association argued that DuPont had not demonstrated any undervaluation on similar imports from Japan.

The Association also opposed the position taken by Dominion Textile Inc. and the Canadian Textiles Institute in seeking an exemption for their products from the provisions of the proposed transaction value system. The Association thought there is already an effective range of trade policy tools to deal with injurious import competition and that the Canadian Textiles Institute uses them effectively. The Association pointed out that tariffs on imports of finished textile products are among the highest in the Canadian Customs Tariff while those on textile raw material inputs are among the lowest.

The Association considered the question of adjusting tariff rates for revenue purposes as a matter to be settled between the Canadian and Japanese governments. However, if such adjustments affect its members, they might seek compensation under Article XXVIII of the GATT.

LUBERTEX INC.

LUBERTEX Inc. is primarily an importer of unfinished cotton and polyester cotton fabrics for both industrial and apparel uses. LUBERTEX opposed any tariff rate increases on textile yarns or fabrics resulting from implementation of the transaction value system.

MICHELIN TIRES (CANADA) LIMITED

Michelin Tires (Canada) Limited favours the abolition of tariffs as a general principle. As a new member of the Rubber Association of Canada, Michelin did not participate in the preparation of the Association's submission to the Board on this reference. The Association recommended against the implementation of the full tariff reduction on tires (tariff item 61815-1) in order to compensate for the expected loss of protection under the new valuation system. Michelin did not concur with this recommendation. Michelin was concerned that it may be adversely affected by the new system because it imports tires from related parties. Under the proposed valuation system, transactions between related parties may be investigated and values for duty can be adjusted.

Michelin also opposed the recommendations made by Du Pont Canada Inc., Dominion Textile Inc. and the Canadian Textiles Institute that the GATT Valuation Code not be adopted for textile products. Implementation of such recommendations would result in increased protection for tire cord fabrics and other textile products used by Michelin in the production of tires. Michelin considered recommendations for opting out of Canada's obligations under the GATT Code to be outside the scope of this reference.

MOTORCYCLE & MOPED INDUSTRY COUNCIL

The Motorcycle & Moped Industry Council (MMIC) represents seven members who account for approximately 99 per cent of all motorcycles sold in Canada, with four Japanese members being the source of over 90 per cent of this total. The Council's brief commented specifically on the adjustment figure in the background paper for tariff item 43839-1 on motorcycles over 250 cc's. The Council considered the proposed 1.065 per cent adjustment to be an excessively large increase since the tariff on motorcycles is scheduled to drop several percentage points by 1987.

Further, the MMIC maintained it was unrealistic to use 1978 fair market values and transaction prices to establish a formula adjustment because motorcycles are products which change substantially from year to year. The products in 1985 will be quite different from the 1978 ones used to calculate the adjustment.

The Council also argued that the adjustment would be inappropriate because the four Japanese members will have related party status and the value for duty of their goods may be calculated by alternative methods of appraisal. However, the effect of these alternative methods of appraisal is unknown. In a similar vein, the Council noted that two other members would suffer disproportionately larger financial penalties from the indicated possible adjustment because they import higher priced machines.

The Council asked the Board to re-examine the current domestic manufacture of motorcycles in Canada to determine whether a protective tariff is warranted since the sole Canadian manufacturer does not compete directly with imports in most of the major sales areas.

THE RUBBER ASSOCIATION OF CANADA

The Rubber Association of Canada (RAC) includes as members the major producers of rubber products in Canada. In its presentation to the Board for this reference, the Association represented all of its members except Michelin Tires (Canada) Limited whose brief opposing the RAC's position is summarized above. The RAC expressed two major concerns. First, destructive imports such as end-of-line goods, job lots, off-spec disposal items, and goods of less-than-prime quality which are presently inhibited by the Customs Act will be encouraged to flow freely into Canada under the proposed legislation. The second concern is that under the transaction value system, in the absence of compensatory rate increases, exporters and importers will be able to reduce very substantially the value for duty of a wide range of goods. The Association argued that imported goods could be priced lower than domestic goods because some cost components which are included in domestic prices are excluded when the same goods are exported.

The Association maintained that the possible rate increases estimated in the background paper represent a totally unrealistic view of the compensatory rate increases required to maintain the same level of tariff protection under the transaction value system as is now available under the fair market value system. The Association proposed the following rate increases instead:

<u>Tariff Item</u>	<u>Compensatory Rate Increase Required</u>
61000-1 belting	6.1
61815-1 tires and tubes	3.8
61815-2 off-highway tires, etc.	3.4
61900-1 hose, etc.	5.7

This recommendation was based on confidential data submitted to the Board. Each firm estimated the loss of protection on its own imports from related companies for the period July, 1978 to March, 1979 as if the transaction value system had been in force at that time. The upward adjustment was based on the firms' knowledge of US law as currently applied to Canadian exports to the US.

The Association expected the loss of tariff protection resulting from the proposed switch to the transaction valuation system to be greatest for imports of rubber products from unrelated exporters in Japan, Europe and the USA. Tires were cited as the more important item for the industry since they constitute about 80 per cent of output. Job lots and end-of-line imports of tires were seen as significant and recurring problems but the proportion of the total Canadian market affected by these problems was unknown. Retreads were also seen as a concern of the future, but not a major one for the moment. The Association stated that almost 90 per cent of the tires imported by Association members (excluding Michelin) are covered by value-for-duty rulings.

In respect of belting and hose the RAC reaffirmed its concern about imports of less-than-prime quality since significant quantities of off-spec belting were entering Canada.

The Association supported the proposal expressed by others that the Board should consider fair market value rulings from April, 1979 right up until December, 1984.

The Association asked the Board to either provide effective solutions, particularly for the problems of irrational valuation of goods from state-controlled economies, job lots, and other disposals of unwanted international

production, or to recommend that the Government should not fully implement the GATT Valuation Agreement. The Association stressed that it was not trying to recover the tariff concessions lost in the last round of the multilateral trade negotiations, that it was just trying to ensure that no further profits would be lost.

SHOE MANUFACTURERS' ASSOCIATION OF CANADA

The Shoe Manufacturers' Association of Canada (SMAC) stated that more than 75 percent of the footwear imported into Canada is valued for customs on the basis of ministerial prescriptions. SMAC maintained that the proposed change of valuation systems cannot be made without a substantial loss of tariff protection for the industry. Thus, its fundamental position for Part I of the reference remains unchanged for Part II: Canada should exempt footwear imports from the Valuation Code and retain the authority to use ministerial prescriptions. In addition, the Association argued that the transaction value of dumped or subsidized goods should not be accepted as value for duty. SMAC recognized that the Code had been signed and that the Board to date took its implementation as a fait accompli.

SMAC noted that although it had no part in the development of the Canadian Manufacturers' Association's position, it strongly supported the CMA's recommendation that the existing valuation system be maintained. According to the Association, footwear imported under tariff items 61105-1, 61105-2, 61105-3, 61110-1 and 61700-1 clearly fulfilled the criteria suggested by the CMA for exempting goods from the Valuation Agreement. SMAC cited the U.S. "Final List" as a clear precedent for a partial exemption of this kind.

SMAC considered that the approach taken in the background paper seriously underestimated the negative consequences of the proposed transaction value system and urged a broader approach. As evidence that the data with respect to footwear imports presented in Tables I and II of the background paper were far from comprehensive, SMAC noted that no impact had been reported in the tables for footwear imports from Brazil. However, a ministerial prescription currently in effect subjects such imports to a 50 per cent advance. Further, a submission by the Department of Consumer and Corporate Affairs (CCA) to the Anti-dumping Tribunal in 1980 was totally at variance with the background paper's assessments of tariff protection. CCA had calculated the effective rate of tariff protection ranged, for example, from 39.2 percent (Spain) to as high as 64 percent (Brazil). On the other hand, the sum of the Board's possible adjustment figures added up to 0.7 per cent for tariff item 61105-1 and no figures were provided for other footwear items. SMAC totally disagreed with the basis for the Board's figures and recommended that the appropriate CCA officials be called to explain their conclusions before the Board and possibly to assist the Board in its calculations. From its own examination of footwear imports in 1978, SMAC had concluded that the nine ministerial prescriptions in effect at that time had increased the value for duty of Canadian imports of footwear by \$26.8 million. This was an overall increase of 10.55 per cent in the value for duty of these goods and would translate into a tariff rate adjustment of 2.64 percentage points for tariff items 61105-1, 61105-2, 61105-3, 61110-1 and 61700-1. The Association recommended that the Board include in its tariff adjustment figure a component of not less than 2.64 percentage points to compensate for the loss of country-specific prescriptions in force prior to April, 1979.

SMAC also expressed shock at the approach taken in the background paper to those imports not subject to footwear prescriptions prior to 1979, charging that it was narrow and biased against Canadian manufacturers. The Association's brief made the same point as several other submissions: the fair market value system has a

deterrent effect, difficult to quantify, that has prevented foreign suppliers from selling to Canada at prices which would invite valuation complaints and re-appraisal. A further problem is that the footwear industry world-wide is extremely mobile. With the proposed valuation system, the Canadian industry will not have ministerial prescriptions to combat the problems of this mobility. SMAC noted that Tariff Board Reference 161 had come about as a result of the dramatic change which had occurred in 15 months in the sourcing of rubber footwear to Canada. The Association recommended that the Board provide in any tariff rate adjustment figure for the reduction in value for duty which will undoubtedly occur with respect to the broad range of footwear imports not subject to valuation rulings or prescriptions.

SMAC acknowledged that the main items of concern to the industry are the ministerial prescriptions in Table II of the background paper and the footwear prescriptions in Table III. It recommended that the Board also provide, either by proposing effective legislation or tariff rate adjustments, for the prospective loss of general prescriptions dealing with some of the Association's other major concerns such as end-of-season clearances, end-of-line clearances, job lots, and goods of other-than-prime quality.

THE SOCIETY OF THE PLASTICS INDUSTRY OF CANADA

The Canadian plastics industry, represented by the Society of the Plastics Industry of Canada, consists of approximately 1500 plastic processors who manufacture, process or fabricate plastic products. Eighty per cent of the domestic industry are small, Canadian owned firms with no foreign connection. However, a large segment of imports (1/4 - 1/3) are accounted for by transactions between related automotive companies, both car and parts manufacturers importing finished products. The Society noted that the United States accounts for almost 90 percent of imports of plastic products, for a trade deficit in 1981 of \$900 million.

The Society of the Plastics Industry of Canada expressed two major concerns about the background paper. One was that hundreds of imported plastics products were not subject to value-for-duty rulings during the period 1976 and 1979 (and thus not covered by the background paper) and these products may be severely affected by the change in valuation systems, although the Society is uncertain as to what exactly the effects will be. The Society's other concern is that, since the industry is relatively new and rapidly developing in terms of products, technology and equipment, products which did not exist in 1979 could in future enter Canada under substantially lower trade barriers.

The Society viewed the adoption of the new Valuation Code in 1985 as part and parcel of the overall GATT agreement and was of the opinion that the level of effective protection gained in GATT negotiations for their products must be maintained when the new Code comes into effect.

The Society shared with other industries the concern about sporadic dumping. The Society believed that the intent of the present anti-dumping system is fair to manufacturers in Canada, but found the policing of sporadic dumping difficult. The Society recommended the strengthening of anti-dumping provisions by reducing the time required for anti-dumping actions and suggested that investigations should be initiated more frequently than in the past, preceded by requests to suspected firms to provide data in support of their pricing policies. The Society argued that Canadian manufacturers should have access to import information in order to monitor the terms on imports of products important to them and that more emphasis should be given to profitability as an indicator of future investment and jobs when assessing injury from dumping.

The Society considered that the information in the background paper was insufficient to allow it to make judgments on tariff rate levels, but it did think that adjustments for revenue purposes only would not make much sense. It would prefer assessing the tariff items individually for problems. Of particular interest to the Society are tariff items 93901-81, 93902-81, 93902-82 and 93907-1. The resin categories 93902-3, 93902-12, and 93902-75 are of no interest to its members. The Society noted that the present tariff structure for plastic products does not adequately reflect the development of the industry.

STARPLEX SCIENTIFIC

Starplex Scientific, a Division of Canadian Medical Laboratories Limited, manufactures health care products which are mainly for treatment and diagnostic purposes as compared to pharmaceutical products. In its presentation to the Board Starplex expressed a general concern that recent gains made by Canadian health care manufacturers, due in large part to the present tariff structure, may be lost under the transaction valuation system.

Starplex stated that until the federal and provincial governments had instituted a "Buy Canadian" health care programme in 1981 large multinational firms had completely dominated the industry. As a result of tariff rate changes to tariff items 69605-1 and 89905-1, Starplex and other Canadian producers had made gains and their manufacturing business was beginning to flourish. Prior to July 1, 1981, growth by Canadian companies had been severely limited because of duty free imports of similar goods.

Starplex claimed that historically Canada has been the dumping ground for large multinationals and expressed concern that this may again become a problem. The firm was considering asking the federal government to change the exemption whereby its products are not eligible in all cases for protection under the Anti-dumping Act.

Although Starplex was not aware of any of its products having been subject to value for duty rulings or ministerial prescriptions, it strongly urged the Board to take all possible steps to maintain the existing levels of tariff protection. Where tariff rate adjustments are not practicable, Starplex suggested that Canada adopt a modified version of the GATT Tariff Agreement to maintain the levels of protection.

UNIROYAL CHEMICAL DIVISION

The Uniroyal Chemical Division of Uniroyal Ltd. is the principal or sole Canadian manufacturer of many chemicals used in the rubber manufacturing industry and also produces some agricultural and specialty chemicals. In its brief, Uniroyal Chemical Division claimed that many of its products are subject to intense import competition from Europe and the United States, and that the future viability of its operations depends on a continuation of the present tariff structure.

Using 1978-79 data from its parent company, Uniroyal compared the duty paid under the fair market value system to the estimated duty which would be paid under the transaction value system based on non-arm's length transactions where the computed method of valuation could apply. From this, the company estimated its loss of tariff protection under the transaction value system might be 20 per cent or more. Uniroyal concluded that such a loss would severely threaten continued production in Canada as it might then be cheaper for its US parent to supply the Canadian market. Uniroyal considered the computed or deducted methods of valuation

for transactions between related parties to be inadequate to protect Canadian producers. In view of this analysis, Uniroyal recommended the creation of a new tariff item for organic chemical accelerators, antioxidants, antiozonants and retarders for rubber and plastic product, with a tariff rate for 1985-87 of 15 per cent.

WESTCLOX CANADA LIMITED

In its presentation, Westclox Canada Limited asked the Board to consider a new tariff item for keywound alarm clocks from communist countries with a higher rate of duty. Failing this, Westclox requested that alternate methods of protection be found that will maintain the current level of protection against these imports entering under tariff item 36800-1 when the ministerial prescription is rescinded.

Westclox claimed that the possible rate increases presented in the background paper would mean a complete loss of protection because tariff item 36800-1 covers so many goods in addition to keywound alarm clocks. Westclox maintained that, even in cases where the alternative methods of valuation may be used under the proposed transaction value system, these methods would not be effective in preserving the current levels of protection.

Westclox's primary concern was that the loss of protection it envisaged resulting from implementation of the proposed valuation system, when combined with pressure from new technology in the form of quartz battery alarm clocks, will be sufficient to drive it out of the keywound clock business. As the only clock manufacturer in Canada, Westclox employs approximately 150 people directly or indirectly in the production of keywound clocks. Westclox claimed that the clock market is still very much dominated by the keywound variety.

Westclox emphasized that the problem of import competition is like a brush fire that can pop up from various sources since production can be easily shifted from one state-controlled economy to another. For this reason ministerial prescriptions have been most effective. Westclox did not think that anti-dumping actions would be as effective as prescriptions and it urged the Board to find a means of protecting the industry under the proposed transaction value system in a manner similar in effect to the ministerial prescriptions.

CHAPTER III

PRELIMINARY ANALYSIS AND POSSIBLE SOLUTIONS

General Criteria for Adjustments

The background paper contained several tables listing goods, imported under various tariff items, which were the subject of valuation actions at the beginning of April, 1979. These tables showed the tariff rate increases which would maintain the level of revenues generated by the valuation actions when the transaction valuation system is introduced in 1985. The background paper sought the public's opinion as to what the criteria should be for the final selection of possible rate adjustments from the listed goods. In the event, the submissions to the Board and the evidence at the public hearing failed to produce any substantive information or opinions on what the criteria should be, or even how such criteria might be formulated. In retrospect it may be that the background paper itself should have presented criteria for consideration and discussion. This possibility was considered during the preparation of the background paper but was discarded because of concern that presentation of criteria at that time might have appeared to prejudge the specific interests of individual parties. As a result most of the evidence received to date has focussed on the scope of the inquiry and on the methodology applied. These issues have been addressed in Chapter I. In summary, the staff does not believe that this issue falls within the terms of reference. Second, the staff does not believe that the terms of reference and the Canadian reservation to the Code permit consideration of actions taken under the present valuation system after the beginning of April, 1979 or of hypothetical levels of protection afforded by the fair market value system.

If the Board itself agrees with this interpretation then the range of possible adjustments is limited to those tariff items listed in the background paper plus some additional items which had been excluded because of the criteria established to select the products affected by the valuation system at the beginning of April, 1979. The problem remains, therefore, to establish criteria for the selection of tariff rate or tariff item adjustments which may be appropriate or necessary. Any such criteria should apply across the entire tariff on an equitable basis.

The background paper covered goods which were subject to value for duty actions during the period January 1, 1976, and April 1, 1979. The first criterion applied by the staff has been to identify those goods where seventy percent or more of the total imports of a particular product originated in the country affected by the valuation action. As has been explained in the background paper, this does not mean that all of the particular goods exported from a specific country were affected by the ruling. The choice of the 70 percent level is somewhat arbitrary but it is not capricious as it has been chosen in the light of GATT practice. The reservation to the Customs Valuation Code states very clearly that any Canadian tariff rate adjustments, i.e., increases in rates bound by the GATT tariff schedules, must be reviewed by the GATT under the provisions of Article XXVIII of the General Agreement. By convention, any GATT signatory which supplies ten percent or more of Canada's imports of a particular product is entitled to participate in the Article XXVIII negotiations. The staff have concluded, therefore,

that there would be little or no overall benefit to Canada to seek increases in MFN bound rates of duty if such increases had to be paid for by compensatory rate reductions on other products to countries whose exports had not previously been subject to any value for duty action. If the Board were to recommend upward tariff rate adjustments for goods where a major proportion originated in countries not affected by value for duty rulings, there is a possibility, assuming the government adopted such recommendations, that compensation might have to be paid. Such compensation would be paid in terms of lower rates of duty for other goods and these other goods may be produced or imported by Canadians who, until that point of time, thought they had no direct interest in this Reference. Such a result would seem to be a denial of natural justice.

It has already been admitted that the 70 percent criterion is somewhat arbitrary. The staff would welcome representations from parties who believe that an upwards adjustment can be justified for any particular product where less than 70 percent of the imported goods were affected by a value for duty ruling.

The second criterion which has been applied relates to the size of the possible adjustment. Canadian tariff rates have traditionally been graduated by half percentage points, e.g., 8 p.c., 8.5 p.c., 9 p.c. This traditional pattern has been broken by the results of the Tokyo Round negotiations which produced rates of duty graduated to the tenth of a percent, e.g., 11.3 p.c. In light of this development the staff have decided to consider a possible adjustment where the impact of a value for duty ruling affecting 70 percent or more of the imports of a particular good represented more than 0.1 p.c. in terms of a rate of duty. Furthermore, since the possible rate adjustments set out in the background paper were calculated to a thousandth of a percentage point, the staff have applied a simple arithmetic rounding rule. For example, if the possible adjustment shown in the background paper is 0.24 p.c. the adjustment is shown as 0.2 p.c. in this paper. But if the possible adjustment is 0.25 p.c. then the new adjustment is shown as 0.3 p.c. Very simply, if the one hundredth percentile is 0 to 4 there has been no change but the one tenth percentile has been rounded up wherever the one hundredth percentile is shown as 5 to 9.

It should be noted that in several instances the goods subject to a fair market value investigation were covered by a CITC class containing "n.e.s." goods, i.e., good "not elsewhere stated" in the CITC. To introduce a new tariff item for goods thus describe may be difficult. One cannot simply change n.e.s. to n.o.p. (not otherwise provided) because the goods elsewhere stated in the CITC are not the same as the goods otherwise provided in the Tariff Schedule; the coverage would be different. To acquire the same coverage, the nomenclature of the new tariff item would require a description of the goods at the 5-digit level of the CITC followed by a listing of all the goods stated specifically elsewhere at the 7-digit level which would be deleted from the coverage of the item by the use of such terms as "other than". Where the "elsewhere stated" classes of goods are few such a listing may not pose a serious problem. However, there are instances where they would be lengthy, cumbersome, confusing and therefore difficult to administer. Where this is the case the creation of new tariff items would not appear desirable or advisable. A new tariff item covering the goods at the 5-digit level would be an alternative. However, the upward adjustment in the rate of duty would be smaller because at this level there would be more goods included which were not subject to a value for duty investigation.

The background paper pointed out that, where several commodity classes entered under the same tariff item, the individual possible adjustments were additive. Participants were asked for their views on adopting such an additive approach. Those participants who addressed this issue were of the opinion that, mainly because the indicated possible adjustments were generally so small, adoption of the additive approach would not yield meaningful results. The staff concurs with this observation and agrees that, in most cases, application of the additive approach will produce only marginal changes in the levels of protection which may be possible. In some instances, however, application of the additive solution may be meaningful and appropriate. There are some cases where several goods entering under a particular tariff item were subject to valuation actions. Very often, because these are closely related goods, the valuation actions may have affected a very high proportion of the goods. In such instances it may be found that, while meaningful adjustments cannot be made for individual classes of goods, it may be appropriate to consider an adjustment for the whole tariff item. The staff have presented alternative solutions where they arise. In the light of this information interested parties may wish to reassess their earlier positions on the additive solution.

Specific Adjustments

The following section shows the results when these criteria are applied to the data presented in Table I of the background paper. Since these data do not refer to specific countries and do not report the dollar value of imports, both the tariff item and the CITC product description are presented.

* * * * *

T.I. 14100-1 Sugar candy and confectionery, n.o.p., including
 sweetened gums, candied popcorn, candied nuts,
 flavouring powders, custard powders, jelly
 powders, sweetmeats, sweetened breads, cakes,
 pies, puddings and all other confections con-
 taining sugar

CITC 104-49-90 Sugar candy nes

If an additive adjustment were to be made to the current tariff item to compensate for the loss of the rulings the rate might be increased by 0.1 p.c. An alternative solution would be to create a new tariff item for sugar candy with a rate of duty 1.4 p.c. higher than that which applies to T.I. 14100-1.

There is a question, however, whether any adjustment needs to be, or should be, made for this item. The sugar candy subject to valuation investigation was imported almost entirely from the United Kingdom. In 1978-79 sugar candy from the U.K. was eligible for entry into Canada at a B.P. rate of 12.5 p.c. Such imports will enter, upon withdrawal of preferential treatment under the B.P. Tariff, at the new MFN rate, which at 15 p.c. represents already a 2.5 p.c. increase in protection against imports from that source. It can be argued that a further increase of 1.4 p.c. for sugar candy nes, or of 0.5 p.c. for all goods entering under T.I. 14100-1 would not be necessary.

* * * * *

T.I. 17800-1 Advertising and printed matter, viz.: Advertising pamphlets, advertising show cards, illustrated advertising periodicals; price books, catalogues and price lists; advertising almanacs and calendars; patent medicine or other advertising circulars, fly sheets or pamphlets; advertising chromos, chromotypes, oleographs or like work produced by any process other than hand painting or drawing, and having any advertisement or advertising matter printed, lithographed or stamped thereon, or attached thereto, including advertising bills, folders and posters, or other similar artistic work, lithographed, printed or stamped on paper or cardboard for business or advertisement purposes, n.o.p.

CITC 895-89-20 Catalogues, advertising

The possible adjustment shown for this item is an additional 1.3 p.c.

CITC 895-89-90 Advertising material, printed, nes

The possible adjustment shown for this item is an additional 5.2 p.c.

This is a situation where an upward adjustment for the whole tariff item may be warranted since virtually all imported advertising material has been subject to value-for-duty rulings. If the additive approach is applied the possible upward adjustment would be 6.7 p.c. which would be added to the MTN rate of 20 p.c.

If an adjustment should be made to this item there are four possible recommendations. First, new specific tariff items could be created. Second, if the additive approach is used the adjustment in the current tariff item could be 6.7 p.c. A third solution might be simply to recommend that the pre-Tokyo Round rate of 25 p.c. MFN be maintained. Finally, since there have been no representations seeking any upward adjustment, it might be concluded that these rulings have outlived their usefulness and that no adjustment is required.

* * * * *

T.I. 18702-1 Films which otherwise would be classified under
tariff item 18700-1

CITC 915-39-30 Microfilm unexposed

The possible adjustment shown in the background paper would justify an increase of 0.1 p.c. in the tariff item. The staff has ascertained that unexposed microfilm accounted for approximately 3 percent of the total imports under tariff item 18702-1. This explains why, although the ruling increased the value for duty by approximately 10.5 p.c., the weighted average possible adjustment is so small.

With a rate of duty of 17.5 p.c. the impact of the ruling increased the duty protection on unexposed microfilm by about 6 p.c. In view of this possible tariff adjustment the staff is of the opinion that an increase in the Tokyo Round rate from 10.2 p.c. to 10.5 p.c. for the item as a whole would be meaningless in terms of protection for Canadian producers of microfilm. This product may be a candidate, therefore, for a new tariff item with a rate of duty in the 16 p.c. range.

* * * * *

T.I. 19910-1 Containers wholly or partially manufactured from
fiberboard or paperboard, n.o.p.

CITC 950-45-79 Boxes, cartons, folding, nes

On the basis of the general criteria the rate of duty for this tariff item might be increased by 0.2 p.c. The staff have determined, however, that approximately 75 percent of the goods entering under 19910-1 were affected by value-for-duty rulings. If the additive approach is applied to the data in the background paper then the total possible adjustment for 19910-1 is 0.3 p.c. In this instance it seems reasonable to apply the additive approach and to increase the rate of duty for the existing tariff item from 10.2 p.c. to 10.5 p.c.

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T.I. 32603-1 Demijohns or carboys, flasks, phials, jars and
balls, of glass, not cut, n.o.p.; lamp
chimneys of glass, n.o.p.; decanters and
machine-made tumblers of glass, not cut nor
decorated, n.o.p.

CITC 950-36-90 Shipping & distrib containers, glass, nes

A strict application of the criteria would result in a tariff rate increase of 0.1%. The staff have determined, however, that approximately 90 percent of the 950-36-90 goods entering under 32603-1 were subject to value-for-duty rulings. In these circumstances if a new tariff item were to be created for 950-36-90 goods, then an increase in the rate of duty of 0.6 p.c., from 11.3 p.c. to 11.9 p.c., would be justified.

* * * * *

T.I. 35400-1 Manufactures of aluminum, n.o.p.

CITC 451-49-90 Aluminum/aluminum alloy fab'd materials, nes

On the basis of the general criteria a possible upward adjustment in tariff item 35400-1 of 0.1 p.c. would be justified. However, the staff have determined that over 92 percent of the 451-49-90 goods entering under 35400-1 were affected by the value-for-duty ruling. Therefore, an alternative solution might be to create a new tariff item for the 451-49-90 goods so that the rate of duty could be increased by 0.7 p.c. from 10.2 p.c. to 10.9 p.c.

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T.I. 41415-1 Bookkeeping, calculating and invoicing machines
and completed parts thereof, n.o.p.

CITC 771-22-57 Memory modules, computer type

The background study indicated that an upward rate adjustment could be justified for this product. However, as pointed out during the public hearings, the government's recent implementation of the Board's report on the computer industry creating T.I. 41417-1 and T.I. 41417-2 with rates of 3.9 p.c. and Free, respectively, suggests that any further adjustments in computer product rates of duty are unnecessary.

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T.I. 41505-1 Refrigerators, domestic or store, completely
equipped or not:
Electric

CITC 655-41-50 Refrigerators, dom, elec, 13.5 cu. ft. and over

The background paper shows that a slight increase in the rate of duty of 0.1 p.c. for this item could be justified. If a new tariff item were created covering only the 655-41-50 goods the rate of duty could be increased by 0.2 p.c. from 12.5 p.c. to 12.7 p.c. To date there have been no public submissions on this item.

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T.I. 41515-1 Washing machines, domestic, with or without
motive power incorporated therein, completed
parts of washing machines

CITC 698-19-10 Washing machines, domestic elec, parts nes

On the basis of the background study and by applying the stated rounding rule an upward adjustment of 0.1 p.c. could be justified. The staff have determined that the 698-19-10 goods account for approximately 50 percent of the imports under the tariff item. If a new tariff item were created for the 698-19-10 goods the justifiable rate increase would remain 0.1 p.c. but this could be justified without applying the rounding rule. If an upward adjustment were to be made in this instance the simplest solution would be to increase the rate of duty for the existing tariff item by 0.1 p.c. To date there have been no public submissions on this item.

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T.I. 43839-1 Motorcycles having an engine capacity of more
than 250 c.c., engines or side cars therefor;
parts of the foregoing

CITC 587-30-22 Motorcycles

On the basis of the information contained in the background paper an increase in the rate of duty of 1.1 p.c. could be justified. The Motorcycle & Moped Industry Council made a submission on this item and argued that, since virtually all of the subject motorcycles are imported by related parties, the provisions of the transaction value system will be sufficient to resolve any future valuation problems. The Council opposed any compensatory rate of duty increase. The staff's analysis of the related party provisions supports the Council's position that no adjustment is necessary for this item.

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T.I. 43910-1 Cars, trailers including house trailers and
mobile homes, n.o.p., wheelbarrows, trucks,
road or railway scrapers and hand carts

CITC 584-99-90 Trailers nes

The background paper shows that by applying the rounding rule an increase of 0.1 p.c. in the rate of duty for this tariff item could be justified. The staff have determined that if a new tariff item were created for the 584-99-90 goods then an increase of 0.2 p.c. could be justified without recourse to the rounding rule.

CITC 522-32-22 Grader, self-propelled, road maintenance type

The staff have determined that, if a new tariff item were created for the 522-32-22 goods, an increase in the rate of duty of 0.3 p.c. could be justified.

To date, there have been no submissions on this item.

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T.I. 44504-1 Electric arc lamps and incandescent electric
lamps, n.o.p.

There are two possible solutions for this item. The simplest solution would be to apply the additive approach since several of the individual CITC classes of goods qualify for minor adjustments under the general criteria. If the additive approach were to be adopted then an increase in the rate of duty for 44504-1 of 1 p.c. could be justified.

The alternative solution would be to break out new tariff items to cover only those specific CITC goods which have been subject to value for duty rulings. Under this approach the following adjustments might be considered.

CITC 682-32-20 Lamps, B/T, sodium vapour 6.4 p.c.

CITC 682-12-10 Lamps, B/T, fluorescent, incl. circular 1.9 p.c.

CITC 682-02-90 Lamps, B/T, incand 31 volts large
base, nes 1.7 p.c.

To date, the Board has not received any specific submissions on these items.

* * * * *

T.I. 44506-1 Electric telegraph apparatus and complete parts
 thereof

CITC 634-29-90 Telegraph equipment nes

On the basis of the information in the background paper an upward adjustment for 44506-1 of 0.1 p.c. could be justified. If a new tariff item was created for the specific CITC goods then the rate could be increased by 0.2 p.c.

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T.I. 44508-1 Electric telephone apparatus and complete parts
 thereof

Each new tariff item based on the two CITC classes of shown in the background paper under this T.I. could qualify for adjustment under the general criteria. This suggests that either the additive approach could be used to adjust the current tariff item or new tariff items could be created. Under the additive approach the rate of duty for 44508-1 might be increased by 0.2 p.c.

If new items were created the upward adjustment would be as follows:

CITC 634-19-90	Telephone equipment, nes	0.3 p.c.
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CITC 634-19-88 Telephone equipment, parts, nes 0.2 p.c.

The Board has not received any submissions respecting these goods.

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T.I. 44512-1 Electric and galvanic batteries, n.o.p., and complete parts thereof, including separator walls of wood, cut to size or not

The background paper shows that several CITC goods entering under this T.I. were affected by value for duty rulings where an upward adjustment could be justified. Under the additive approach the rate of duty for the present T.I. could be increased by 1 p.c.

If new tariff items were created for the following classes of goods rates of duty could be increased by the percentages shown by applying the general criteria.

CITC 693-95-10 Batteries, parts of, nes 0.3 p.c.

CITC 633-59-90 Batteries, dry cell, nes 5.5 p.c.

To date, the Board has received no submissions on these items.

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T.I. 44516-1 Electric motors, and complete parts thereof,
 n.o.p.

The background paper shows that two of the three classes of goods affected by value for duty rulings could be adjusted under the general criteria. If the additive approach were applied it would be possible to increase the rate of duty for the current 44516-1 item by 0.9 p.c.

Alternatively, if new tariff items were created for the following specific CITA goods, then, by applying the general criteria rates of duty might be adjusted upwards as follows:

CITC 503-66-20 Motors, electric, AC 1/3 HP and under 0.5 p.c.

CITC 503-66-30	Motors, electric, AC over 1/3 HP to 1 HP inclu	0.7 p.c.
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There have been no specific submissions on these goods to date.

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T.I. 44533-1 Radio and television apparatus and parts thereof
n.o.p.

The background paper shows that a number of goods entering under 44533-1 were affected by value for duty rulings. If the additive approach were applied it is possible to justify an upward adjustment in the rate of duty for the present tariff item of 0.2 p.c.

If the general criteria were applied then it would be possible to create two new tariff items for the following classes of goods and to increase the rate of duty by the percentage indicated.

CITC 637-13-21 Receivers, TV 1.5 p.c.

CITC 637-49-30 Receivers, tuner amplifier combination 3.6 p.c.

To date, there have been no submissions on these items.

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T.I. 44536-1 Record changers; turntables; tone arms; pick-up
cartridges; phonograph needles; microphones,
including microphone stands

Several classes of goods entering under this item are shown in the background paper as being affected by value for duty rulings. If the additive approach were used it would be possible to justify an increase in the rate of duty for 44536-1 of 0.3 p.c.

If the general criteria were applied then it would be possible to create the following new tariff item with the indicated additional rate of duty.

CITC 639-92-20	Record changers and turntables, phonograph	0.5 p.c.
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There have been no specific submissions to date on these items.

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T.I. 44538-1	Recorders, reproducers and dictation recording and transcribing equipment using magnetizable tape as a recording medium; parts thereof, n.o.p.
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The background paper shows three class of goods entering under 44538-1 which were affected by value for duty rulings. If the additive approach were applied it would be possible to justify an upward adjustment for the tariff item of 0.1 p.c.

If the general criteria were applied then it would be possible to create the following new tariff item with the indicated additional rate of duty.

CITC 634-75-40	Recorders/players, tape video exc TV brdcast	0.6 p.c.
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To date, there have been no submissions on this item.

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T.I. 51100-1	Golf clubs and finished parts thereof; racquets and racquet frames and baseball bats; balls of all kinds for use in sports, games or athletics, n.o.p.
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In considering this item it should be noted that, because of a collating error, the data for two classes of goods appears at the bottom of Table I, page 19, and that the data for two additional classes of goods appears on page 20 immediately following the information for 51110-1. These four golf club items should be studied together under 51100-1.

If the additive approach were applied the data shows that the rate of duty for 51100-1 could be adjusted upwards by 0.4 p.c.

If the general criteria were applied then it would be possible to create the following new tariff items with rates of duty increased by the indicated amounts.

CITC 832-25-20	Golf clubs, individual	1 p.c.
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CITC 832-24-10	Golf balls, except hollow practice type	1.3 p.c.
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CITC 832-25-30 Golf clubs, sets/show tot no pcs
not sets 1.4 p.c.

To date, there have been no submissions on these items.

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T.I. 51400-1 Coffins and caskets, and metal parts thereof

CITC 949-33-40 Caskets and coffins, metal

Since only one class of goods subject to a value for duty investigation, metal caskets, entering under this item has been identified, the additive approach is not applicable.

If a new tariff item were created for the affected class of goods, the data indicate a justifiable higher rate of duty of 4.5 p.c.

There have been no submissions to date in respect of this item.

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T.I. 51805-1 Billiard tables, with or without pockets; cues,
balls, cue-racks and cue tips

CITC 832-15-42 Tables, billiard

The background paper shows that the present tariff item rate of duty could be increased by 1.2 p.c. to compensate for the loss of the current valuation action. Alternatively, if a new tariff item were created covering only the 832-15-42 goods then it would be possible to justify a 2.7 p.c. increase in the MTN rate of duty, i.e., from 15 p.c. to 17.7 p.c.

Since the public hearing in June, 1982, the staff received an inquiry about this item from The World of Billiards and anticipates that there will be further submissions.

* * * * *

T.I. 61800-1 Rubber cement and all manufactures of rubber and
gutta-percha, n.o.p.

CITC 325-99-90 Rubber fabricated materials nes

Three classes of goods entering under this tariff item were affected by value for duty actions. If the additive approach is applied it would be possible to justify an increase in the current tariff item rate of duty of 0.2 p.c.

This is a case where it would not be feasible to create a new tariff item for the n.e.s. class of goods.

There have been no submissions directly related to this item.

* * * * *

T.I. 64700-1 Jewellery of any material, for the adornment of the person, n.o.p.

CITC 810-27-89 Costume jewellery nes

Five classes of goods entering under this tariff item were affected by value for duty actions. If the additive approach is used it would be possible to justify a 0.2 p.c. increase in the rate of duty for the current tariff item.

If the general criteria were applied a new tariff item might be created for the 810-27-89 goods with an additional 0.6 p.c. rate of duty, 13.8 p.c. as opposed to 13.2 p.c.

There have been no representations concerning this item.

* * * * *

T.I. 93402-1 Organic surface-active agents; surface-active preparations and washing preparations, whether or not containing soap

CITC 429-79-89 Surfactants, compounded, nes, industrial

CITC 800-68-30 Detergents dishwashing, powder or liquid

Several classes of goods entering under this tariff item were the subject of value for duty actions. If the additive approach were applied it would be possible to justify an increase in the rate of duty of the current tariff item by 1.2 p.c.

If the general criteria were applied it would be possible to create two new specific tariff items. A new item for the 429-79-89 goods could be created with a rate of duty increase of 1.5 p.c. A new item for the 800-68-30 goods could be created with a rate of duty increase of 8.3 p.c.

There have been no specific submissions on this item.

* * * * *

Tariff 93902 - Polymerisation and copolymerisation products (for example, polyethylene, polytetrahaloethylenes, polyisobutylene, polyvinyl chloride, polyvinyl acetate, polyvinyl chloroacetate and other polyvinyl derivatives, polyacrylic and polymethacrylic derivatives, coumarone-indene resins):
(a) Without admixture other than an agent necessary to prevent caking, including scrap and waste; aqueous emulsions, aqueous dispersions or aqueous solutions, without other admixture:

T.I. 93902-3 Polyethylene type

The background paper shows that three classes of goods entering under this item were affected by value for duty actions. If the additive approach were applied it would be possible to justify a rate of duty increase for the tariff item of 0.5 p.c. If this solution were to be implemented the rate of duty under 93902-3 would return to the pre-MTN level of 10 p.c.

If the general criteria were applied it would be possible to create the following two new tariff items for which the Tokyo Round rate of 9.5 p.c. plus the indicated percentage additions would apply.

CITC 423-33-20 Polyethylene resin low density 0.5 p.c.

CITC 423-33-40 Polyethylene resin high density 0.7 p.c.

To date, there have been no specific submissions on these goods.

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Tariff 93902 (as above)

Heading (g) Plates, sheets, film, sheeting, strip; lay-flat or other tubing, blocks, bars, rods, sticks, non-textile monofilament and other profile shapes imported in lengths, all produced in uniform cross-section:

T.I. 93902-82 Polyethylene type

According to the background paper there were four classes of goods affected by value for duty actions entering under this item. If the additive approach were applied it would be possible to increase the rate of duty on the item by 0.2 p.c.

If the general criteria were applied it would be possible to create the following new tariff item with the MTN rate of duty increased by 1.8 p.c. from 13.5 p.c. to 15.3 p.c.

CITC 424-33-26 PE sheet, medium density/over .01" thick

To date, there have been no specific submissions on these items although some of the issues have been addressed in a general way by the Society of the Plastics Industry of Canada.

* * * * *

T.I. 93907-1 Articles of materials of the kinds described in heading 93901 to 93906 inclusive n.o.p.

The background paper indicates that twenty classes of goods entering under this item were affected by value for duty actions. If the additive approach were applied to this item it would be possible to justify an increase in the rate of duty for the current item of 0.2 p.c., from 13.5 p.c. to 13.7 p.c.

In their submission on the background paper the Plastics Society presented their general views and problems and it is anticipated that they, and perhaps others, will wish to make further specific comments on these alternative solutions.

* * * * *

Possible Adjustments for Table II

Table II of the background paper lists garments and footwear products which were the subject of a series of ministerial prescriptions. These prescriptions were issued as a means of enforcing ordinary value for duty rulings following an investigation. Section 39(d) of the Customs Act provides that where

the Minister is of the opinion that by reason of unusual circumstances the application of sections 36 and 37 is impracticable, the value for duty shall be determined in such manner as the Minister prescribed.

In the case of the Table II prescriptions the "unusual circumstances" were the existence of a large number of producers of the goods under investigation in the exporting countries. Value for duty rulings are normally issued to individual exporters. In these instances, however, the large number of small producers and their constantly changing involvement in exporting to Canada rendered the normal issuing of exporter specific rulings inefficient and impractical. The prescriptions applied to a broad range of garments and footwear from five countries whenever the goods named in the prescriptions were exported to Canada from these countries. The prescribed advances in the values for duty were established by National Revenue, Customs and Excise, following value for duty investigations of producers who were actually exporting the subject goods to Canada.

These prescriptions were discussed at the public hearing earlier this year. Representatives of the Canadian Importers' Association suggested that in many instances it would be unfair to apply a weighted average rate adjustment to an existing tariff item where a significant proportion of future imports may originate in countries which had not been affected by the original valuation action. They agreed that it would be much more equitable to ensure that any upward rate adjustment applies only to the goods from the country named in the prescription. It was agreed that if the prescription advanced the value for duty by 20 percent and the applicable rate of duty was 25 p.c. then the impact of the prescription was equivalent to an additional 5 p.c. rate of duty. In these situations, therefore, it has been possible to calculate the impact of the prescriptions presented in Table II with a high degree of accuracy and without recourse to a sampling technique. The CIA agreed that such rate conversions would have no effect on the landed, duty-paid price of the goods in Canada.

In subsequent evidence, this type of a country specific rate conversion was supported by the Shoe Manufacturers' Association of Canada (SMAC). This support was tempered, however, by the observation that such a one-shot conversion of the actual 1979 prescriptions could not be considered an adequate longer-term solution in a dynamic world market where sources of supply can change very quickly.

As a result of this discussion the staff have attempted, on the basis of available data, to calculate the additional rates of duty which would be justifiable if the prescriptions affecting the goods listed in Table II were converted to rates of duty applicable to those goods when imported only from the named countries. These prescriptions name the countries to which they apply. They also provide a description of the goods but these descriptions are usually very general and do not relate the goods to specific tariff items or commodity classes. For example, the prescription may refer to "wearing apparel originating in or exported to Canada from Taiwan". Table II contains the basic information for all the "wearing apparel" items which were imported from Taiwan and these are listed by tariff item. The tariff items frequently cover much broader categories of goods than do the commodity classes. Wearing apparel, for example, may enter under tariff items covering "clothing, wearing apparel and other articles, made from woven fabrics, and all textile manufactures ..." As in the calculation of all other possible adjustments the proposed rate adjustments represent weighted averages. This procedure has been based on the working assumption that the resulting country specific rates of duty would be applied to current tariff items. It could be argued that this is an unfair assumption. The goods selected for possible adjustment in this paper have been chosen because a high percentage of the goods were in fact subject to a value for duty action. In many cases it is proposed that new tariff items might be created in order to focus the impact of the possible adjustments. If it were decided in principle that country specific rate adjustments could provide equitable compensation then further consideration could be given to breaking out more specific items covering only those goods actually affected by the prescriptions. Of course, it will be recognized that if this were done it would result in higher rates of additional duty for the specific goods.

The following table presents the staff's calculations of the additional rates of duty which might apply on a country specific basis to compensate for the loss of the prescriptions described in Table II of the background paper.

Schedule of Possible Country Specific Adjustments to
Compensate for the Loss of Certain Ministerial Prescriptions

<u>Tariff Item</u>	<u>Description</u>	<u>Country</u>	<u>Additional Rate of Duty</u>
52305-1	Clothing, wearing apparel and other articles, made from woven fabrics wholly of cotton; all textile manufactures, wholly or partially manufactured, the component fibre of which is wholly cotton, n.o.p.		
	where such goods originate in or are exported from		
		Hong Kong	2.22 p.c.
		Korea, Republic of (South)	0.02 p.c.

<u>Tariff Item</u>	<u>Description</u>	<u>Country</u>	<u>Additional Rate of Duty</u>
53305-1	Clothing, wearing apparel and articles made from woven fabrics, and all textile manufactures, wholly or partially manufactured, composed wholly or in part of wool or hair, when the textile component thereof is not more than fifty per cent, by weight, of silk, n.o.p.		
	<p>Note: The discount on importations under British Preference, as provided for under section 5 of this Act, might be applicable.</p> <p>where such goods originate in or are exported from</p>		
		Hong Kong	1.60 p.c.
54305-1	Clothing, wearing apparel and articles, made from woven fabrics, and all textile manufactures, wholly or partially manufactured, composed wholly or in part of vegetable fibres, n.o.p., when the textile component is not more than fifty per cent, by weight, of silk nor fifty per cent or more, by weight, of man-made fibres or filaments or glass fibres or filaments, not containing wool or hair		
	<p>where such goods originate in or are exported from</p>		
		Hong Kong	1.04 p.c.
	<p>The following, when the textile component thereof is more than fifty per cent, by weight, of silk:</p>		

<u>Tariff Item</u>	<u>Description</u>	<u>Country</u>	<u>Additional Rate of Duty</u>
55303-1	Clothing, wearing apparel and articles, made from woven fabrics, and all textile manufactures, wholly or partially manufactured		
	where such goods originate in or are exported from		
		Hong Kong	0.36 p.c.
51600-1	Clothing, wearing apparel and articles made from woven fabrics, and all textile manufactures, wholly or partially manufactured, the textile component of which is fifty per cent or more, by weight, of man-made fibres or filaments or of glass fibres or filaments, not containing wool or hair		
	<u>Note:</u> The discount on importations under British Preference as provided for under section 5 of this Act, might be applicable.		
	where such goods originate in or are exported from		
		Hong Kong	1.58 p.c.
		Korea, Republic of (South)	0.94 p.c.
		Taiwan	0.26 p.c.
56805-1	Knitted garments, knitted fabrics and knitted goods, n.o.p.		
	where such goods originate in or are exported from		
		Hong Kong	1.60 p.c.
		Korea, Republic of (South)	1.92 p.c.
		Taiwan	1.45 p.c.

<u>Tariff Item</u>	<u>Description</u>	<u>Country</u>	<u>Additional Rate of Duty</u>
61105-1	Boots, shoes, slippers and insoles of any material, n.o.p.		
	where such goods originate in or are exported from		
		Italy	0.03 p.c.
		Korea, Republic of (South)	0.014 p.c.
		Spain	0.22 p.c.
		Taiwan	1.65 p.c.
61120-1	Leather garments, lined or unlined		
	<u>Note:</u> The discount on impor- tations under British Prefer- ence, as provided for under section 5 of this Act, might be applicable.		
	where such goods originate in or are exported from		
		Hong Kong	3.90 p.c.
61905-1	Rubber clothing and clothing made from waterproofed cotton fabrics		
	<u>Note:</u> The discount on impor- tations under British Prefer- ence, as provided for under section 5 of this Act, might be applicable.		
	where such goods originate in or are exported from		
		Korea, Republic of (South)	0.09 p.c.
93907	- Articles of materials of the kinds described in headings 93901 to 93906 ^(a) inclusive, n.o.p.:		

(a) Headings 93901 to 93906 include the following goods "Artificial resins and plastic materials, cellulose esters and ethers, and articles thereof".

<u>Tariff Item</u>	<u>Description</u>	<u>Country</u>	<u>Additional Rate of Duty</u>
93907-1	(b) Other than the following ... where such goods originate in or are exported from	Hong Kong Korea, Republic of (South) Taiwan	0.03 p.c. 0.09 p.c. 0.05 p.c.

The staff are aware that the possibility of country specific tariff rate adjustments raises certain considerations which may not have been contemplated previously in the context of customs valuation. It may be the view of some that country specific duties are contrary to the most-favoured-nation principle of the GATT. The staff would concur with this view as a general principle but believe that in this instance there are special circumstances which should be taken into consideration. By the terms of Canada's reservation to the Customs Valuation Agreement the signatories to the GATT agreed that Canada would need to make certain tariff adjustments in order to implement the Agreement. The ministerial prescriptions in Table II were in effect at the beginning of April 1979 and none of the countries affected by these prescriptions had lodged a formal objection against these actions with the GATT. It must be assumed, therefore, that in applying these prescriptions Canada was acting in accordance with its rights under the GATT. It has been agreed by both Canadian importers and Canadian producers that the prescribed ad valorem advances for the values for duty can be converted to ad valorem

(b) Excluded from 93907-1 are the following:

- 93907-2 Cast phenolic resin handles, in the rough, for use in the manufacture of cutlery
- 93907-4 Plastic shapes, unfinished, light polarized, coated or not, for use in the manufacture of eyeglasses
- 93907-5 Plastic shapes, not further manufactured than shaped concavely on one side, for use in the manufacture of contact lenses
- 93907-6 Snow ski blanks, not further manufactured than a wood or foam core overlaid with glass fibres and epoxy resin, with metal edges, for use in the manufacture of skis
- 93907-7 Fishing rod blanks, glass fibre reinforced, solid or hollow, for use in the manufacture of fishing rods ..
- 93907-8 Tapered monofilaments composed of polyamide or saturated polyester for use in the manufacture of paint brushes
- 93907-9 Plastic parts for use in the manufacture of locks for domestic type freezers
- 93907-10 Crimped polypropylene filaments for use in the manufacture of broomball brooms

rates of duty without any change in the landed, duty-paid cost of the goods. From the foreign exporters' point of view this means that converting the prescriptions to ad valorem rates of duty will not impair their access to the Canadian market. From a GATT perspective such a conversion would contribute to trade stability. At the present time the prescribed ad valorem advances in the values for duty can be changed without notice at any time. If the prescriptions are converted to ad valorem rates of duty as part of Canada's implementation of the Customs Valuation Agreement then the rates would be bound under the GATT. This would provide greater certainty and transparency for the foreign exporters, Canadian importers and Canadian producers of these goods.

The staff invite interested parties to comment generally on this method of adjustment and to submit their concerns about specific products which might be affected.

Other Ministerial Prescriptions

Tables III and IV of the background paper list the ministerial prescriptions (other than those in Table II), which existed at the beginning of April, 1979. The staff's examination of import documents produced little, if any, evidence of the effect of these prescriptions on actual importations. This does not imply that they had no effect but it does mean that the criteria for adjustments established for the value of duty rulings presented in Table I cannot be applied. The staff have determined, however, that these prescriptions were issued over the period 1960 to 1979 and it is perhaps legitimate to question the level of enforcement of individual prescriptions over the years. Another problem in calculating their impact has been that, like the value for duty rulings, most of the prescriptions were company specific. The customs entry study only looked at goods possibly affected by value for duty rulings issued from January, 1976, to April, 1979, and in the great majority of cases little or no impact was found. It is not surprising, therefore, that even less impact was found for prescriptions issued over a nineteen year period.

It is questionable whether meaningful adjustments could be proposed even if the customs entry study had revealed measurable effects. As noted, many of the prescriptions are company specific and application of the weighted average adjustment calculation for all imports of the subject goods from all sources would have produced negligible results. A further problem is that the basic information needed to calculate an adjustment was not available. Many of the prescriptions state that the value for duty shall be the value of comparable goods from another country or the domestic selling price of another producer in the country of export. Information on these comparative values and prices are not available. An additional problem is that the prescriptions name the goods affected but these do not necessarily relate to identifiable tariff items or commodity classifications. This ambiguity further restricts the collection of hard data.

Another problem in identifying possible adjustments involved those prescriptions which provide a 50 percent advance in value for duty if the exporter is the manufacturer of the goods or for a 25 percent advance if the exporter purchased the goods. Here again the staff have been unable to identify any significant impact. In the absence of any hard data it has not been possible to develop criteria which might be used to postulate possible adjustments for these prescriptions.

Finally, there are those prescriptions which were issued under the authority of section 39(b) of the Customs Act which provides that the Minister shall prescribe values for duty where goods imported

- (i) are intended to be assembled, packaged or further manufactured in Canada or are intended to enter into the course of manufacture in Canada,
- (ii) are used or obsolete goods,
- (iii) are not prime quality goods as known in the trade, or are known in the trade as remnants, close-outs or discontinued lines or are surplus goods,
- (iv) constitute a job lot, or
- (v) are intended to be used directly in the process of manufacture or production of goods and like goods are not sold in the country of export.

A great deal of the evidence to date has dealt with the apparent importance of these provisions to the overall operations of the fair market value system. There is, however, very little hard evidence on which to proceed. The examination of 60,000 customs entries for 1978 which included tariff items which should have been affected by such prescriptions revealed nothing. This may have been due to the random selection of the entries. Throughout this reference the Board has heard conflicting evidence on these issues. On the one hand it has been argued that Canadians are well educated, sophisticated, high-income earners who demand high quality goods, broad selection and the latest styles and fashion. On the other hand it has been argued that, because of the scales of production in other countries, these measures must be retained or the Canadian market will be taken over by used goods, miscellaneous job lots, remnants and end-of-season or discontinued lines. Given the lack of evidence it must be assumed that there is validity to both points of view but that it will depend on the particular goods being discussed.

The background paper raised these problems and invited interested parties to propose solutions which might be practical in relation to their products. The only solution proposed was that Canada should not adopt the transaction value system for any of these "problem" imports. As discussed in Chapter I the staff are unable to accept this solution based on the understanding that Canada has signed the Customs Valuation Agreement and is committed to implementing the transaction value system by January 1, 1985. If the staff's understanding of the position is correct and if these problems are significant then some other solution must be found.

Thus far consideration has been given to possible adjustments by means of either increases in the rates of duty for existing tariff item or by creating new, more specific tariff items with higher rates of duty. The question is whether these techniques offer viable and practical solutions for these Canadian import problems. In the staff's opinion higher rates of duty for existing tariff items would be neither adequate nor equitable. What then are the possibilities of creating new tariff items? For example, in the case of used machinery could a single new tariff item be created or should there be a new tariff item for used machinery for each existing item covering new machinery. If a new tariff item for all used machinery were created what should the rate of duty be - 10 p.c., 12.5 p.c., 15 p.c.? Perhaps a new used machinery item might state that wherever a tariff item exists for similar new goods the rate of duty shall be the rate for the new goods plus an additional x p.c. What should the x p.c. be?

The Rubber Association of Canada and others made representations in respect of imports of used tires. The Department of National Revenue, Customs and Excise, "Appraisal of Used Goods Manual" presents the rules currently in use for the valuation of imports of used tires for retreading. Does the Association or any other interested party have views on how such a solution might be applied to used tires and what an appropriate additional rate of duty might be?

There is a question whether this type of solution is practical from an administrative point of view for all the situations covered by section 39(b) of the Customs Act. In the case of used goods it is assumed that these can be easily identified at the border by customs officials. Evidence presented by textile and garment industry representatives has highlighted a problem with less-than-prime quality, end-of-season goods, etc. Steel industry representatives have noted the problem of "off-spec" goods. If new tariff items with higher rates of duty were created for these goods can it be reasonably expected that export documentation will show that the goods are end-of-season, etc., and that they are subject to a higher rate of duty? Evidence to date suggests that most goods in these problem categories are sold to Canada in arms length transactions. Considering the enhanced role of the importer under the proposed transaction value system, is it reasonable to assume that the importer will necessarily be aware that the goods he has purchased are "off-spec"? Finally, if the nature of the goods is not stated on the invoices and if the importer is not aware of the true nature of the goods, is it reasonable to expect that customs officers will be able to ensure that the goods enter at the higher rate of duty? If the purpose of such adjustments is to ensure that Canadian producers continue to benefit from a comparable level of protection then there should be some assurance, in advance, that any proposed adjustments will be capable of effective administration.

The Board has heard considerable evidence from the Canadian Manufacturers' Association, supported by other associations and companies, about the overall deterrent effect of the fair market value system. It is argued that the fair market value system has had the general effect of inhibiting the undervaluation of goods for customs purposes and of providing a first line of defence against dumping. Several participants stated that the fair market value system has been particularly useful for combating sporadic dumping. It is the staff's impression, at this time, that a major reason for the apprehension in many quarters about the change to the transaction value system results from a perceived loss of the ability to deter certain pricing practices. If this is correct then it may be useful to consider more closely what the fair market value system can, and in fact does, do to deter unfair pricing practices and to examine what may be possible under the transaction value system.

The customs entry study which served as the basis of the background paper has produced only a very limited number of meaningful adjustments. Indeed, the staff have calculated that the total revenue contribution of the fair market value system in 1978 was only about 1.4 percent of total duties collected. The customs entry study was only a sample of those products most likely to have been affected by the system and it can be assumed therefore, that the actual contribution was somewhat greater. In any event, it can probably be agreed that the overall actual protective contribution of the fair market value system is small. This information, however, has not resulted in any general criticism of the system, or of its administration, by Canadian producers who are the intended beneficiaries. This suggests that the benefits are to be found elsewhere.

A fairly detailed study of several thousand valuation case record cards suggests an answer. Some investigations were initiated by National Revenue but the vast majority were initiated as a result of either an inquiry or a complaint.

The staff have observed that inquiries were generally submitted by Canadian importers who were related to the foreign supplier of the goods. These cases clearly represent situations where the parties affected were aware of the fair market value system. The rulings issued in response to inquiries were seldom sent for enforcement. Therefore, these cases support the argument that knowledge of the fair market value system and voluntary compliance with it provided a deterrent against under-valuation. In considering whether or not there is a need for any tariff rate adjustments because of a change to the transaction value system it is necessary to consider what will happen under the transaction value system.

Section 37(1) of the draft legislation to implement the transaction value system provides that the value for duty shall be the transaction value only where the purchaser and vendor are not related or, if they are related, where the customs officials are satisfied that the relationship did not influence the price of the goods. Without going into administrative details, this means that National Revenue will have to satisfy themselves that related party selling prices are not affected by the relationships. The test values provided for in the law should generate prices which cover the full costs of production plus representative amounts for overheads and profits. While these test values will never be in the same amount as fair market values it has been generally accepted that they will eliminate "unfair" prices.

National Revenue estimate that 20 percent of Canadian importations are between related parties. But even this large number does not reveal the true importance of the related party provisions in the Canadian context because this 20 percent of total importations represents over 60 percent of the total value of Canadian imports. In the years ahead it will probably be found that the related party provisions of the GATT Code are of greater protective benefit to Canada than to any other industrialized country.

National Revenue are presently developing systems to enable them to meet the administrative requirements of the proposed transaction value system. However, because of the magnitude of the related party importations, it would be unrealistic, and administratively inefficient to expect that they could or should verify every related party selling price. As noted, nearly half of the existing fair market value investigations resulted from a complaint by Canadian producers. This works because section 46(4)(d) provides that the Deputy Minister may re-determine the tariff classification or re-appraise the value for duty of any goods in any case where he deems it advisable, within two years of the date of entry of the goods. [Section 46(4)(d) covers misrepresentation and fraud and does not have a time limit.] Section 46 of the Customs Act will not be changed by the proposed amendments to implement the transaction value system. This means that in future where commercial intelligence suggests undervaluation it will still be possible for Canadian producers to bring the matter to the attention of National Revenue. Low selling prices under either the fair market or transaction value systems do not necessarily mean there is undervaluation but at least it will be possible, in respect of over 60 percent of total imports, to check. For these imports the deterrent effect will remain - indeed it may be strengthened.

Since the last public hearing several Canadian companies in the rubber, chemical and textile industries have submitted confidential commercial data. All of this information concerns related party importations where the fair market values are greater than the inter-company transfer prices. The thrust of these submissions seems to be that if the present administrative procedures applied by the US Customs Service under the transaction value system to exports from Canada were to be applied to past US related party exports to Canada that, in future, transaction values will be lower than part fair market values. This information is interesting but inconclusive. In the first place, the future administrative procedure applied by National Revenue may not be identical to those presently applied by the US Customs Service. Second, the United States implemented the transaction value system very quickly after the MTN and experience with the system may result in changes in administration. Third, there is a fundamental error in making this sort of comparison in terms of the provisions of the Customs Valuation Agreement. The US Customs Service generally applies the computed method when an alternative method of valuation is required. Under the proposed legislation the computed value will be the exporter's actual material and production costs plus an amount for profit and general expenses that is generally reflected by all the other producers in the country of export on the sale of all goods of the same class or kind to Canada. The business, financial and accounting communities will recognize that these calculations can produce vastly different results as between Canada and the United States and that an a priori assumption that such figures for Canadian exports to the US can be applied to US exports to Canada is, at best, hypothetical. The development of new administrative procedures is not the responsibility of the Tariff Board but this one issue illustrates the magnitude of the transition problem for National Revenue. Nevertheless, in a peculiar instance where the computed value may be the same on both sides of the border it is probably true that the Canadian computed value for duty may be somewhat lower than the fair market value. Since the Board has not been asked to compare the two systems the staff has not attempted to calculate these differences. If such a hypothetical calculation were possible, however, any net loss or gain should probably take into account the gains resulting from the possibly broader application of the transaction value system's provisions.

In studying these confidential submissions the staff are uncertain exactly what point is being made and what these companies expect to happen. Are they suggesting that possible minor reductions in levels of tariff protection will result in reduced production or plant closures in Canada and that these multinationals will in future supply the Canadian market from off-shore? If this is the concern is it not possible that a relatively minor upward movement in the value of the Canadian dollar could have the same result? One must assume that these companies believe the inter-company transfer prices shown on the invoices are the same as would be found on invoices for arms-length transactions. This may be correct, but if it is then it raises the question whether this is a problem of finding the correct price for customs valuation or if these are low-cost goods or unfairly priced goods which may require a different solution.

The confidential invoices relate to goods imported from related parties in the United States. In response to questions from the staff it has been stated that at least some of these goods have been exported to Canada through a US DISC (United States Domestic International Sales Corporation). A GATT panel has found that a DISC constitutes a prohibited export subsidy and the United States government has

undertaken to remove the DISC legislation. When the DISC legislation is removed there should be an upward adjustment in prices. This will apply to both arms-length and related party transactions for goods exported at present from the United States through a DISC. The price effect of the DISC is not known at present. This makes it very difficult in the context of possible adjustments for the change to the transaction value system to justify upward rate adjustments.

In the letter of reference the Minister asked the Board "to consider whether some of the problems which the current valuation system seeks to address might better be dealt with under other instruments of import policy". This suggests the government was aware that, under the provisions of the fair market value system, it was possible in some cases to provide protection against low priced imports. Some submissions suggest that the fair market value system has been applied in a non-transparent and arbitrary manner in order to increase the values for duty of some goods. Others have stated that implementation of the transaction value system will remove an important element of protection against sporadic dumping. It is not the purpose of this reference to review the effectiveness or the correctness of the fair market value system. The system follows an act of Parliament and, although criticized by Canada's trading partners from time to time, it has not been the subject of formal consideration in the GATT. Therefore, for the purposes of this paper the staff have proceeded on the assumption that past actions in applying the fair market value system are legal and in keeping with Canada's rights and obligations under the GATT. The staff have taken the position that, as long as Canada is a signatory to the GATT, future applications of import policy instruments should reflect Canada's GATT rights and obligations.

There is a hierarchy of import policy instruments under the GATT. At the first level, and having the broadest application, are the bound MFN rates of duty. These rates of duty represent the basic protection to which all producers of a product in a particular country are entitled to by law. If the rates of duty are stated in specific terms, e.g. \$1.00 per ton, there is no need for a customs valuation system. However, where the rate of duty is expressed as a percentage of the value of the goods, e.g., 10 p.c. ad valorem, then a customs valuation system is required to establish rules for determining the actual value of goods. Under the GATT it is not envisaged that the system of valuation should do more than this.

The next level in the GATT system deals with those situations where the selling prices are too low or "unfair" when compared to the exporter's selling prices in his domestic market. These low prices are due to dumping or subsidization. GATT Article VI states that dumping "is to be condemned if it causes or threatens material injury to an established industry in the territory of a contracting party or materially retards the establishment of a domestic industry". As a result, under the Anti-dumping Code an anti-dumping duty may only be imposed to offset material injury. Where the dumping and consequent material injury have been established the country of export cannot claim that its rights of access to that market have been impaired. There is no question of compensation. The rules governing countervailing duties are slightly different but are not summarized here because evidence to date on this reference has not identified subsidization as a significant problem.

The third level in the GATT hierarchy deals with emergency or "safeguard" actions and are covered by Article XIX. Article XIX covers "unforeseen developments" where goods are being imported "in such increased quantities and under such conditions as to cause or threaten serious injury to domestic producers". The import policy instruments generally used to counteract such injury are quotas or surtax. Although not explicitly mentioned in Article XIX, the imposition of quotas or a surtax generally results in a demand for compensation by the affected exporting countries.

In reviewing the public evidence, studying the case by case trade data and assessing the tenor of the concerns expressed by domestic interests, the staff have concluded that the historic application of the fair market value system, at least in the view of domestic producers, provided some protection at all three of these levels. A broader study of customs procedures by other countries would probably lead to similar conclusions. A general recognition of this fact by governments was undoubtedly one of the reasons for the negotiation of the Customs Valuation Agreement. Since the conclusion of the MTN there has been a growing body of literature discussing the need for more flexible or contingency methods of protection. It is argued that as the import measures available under the GATT become more detailed countries will have to develop more specific cause and effect legislation. It is unlikely that over time the number of import related actions will decline but rather than such actions will be focused at specific causes and sources. The gain in this for the world trade community will be greater transparency of problems and reactions. The cost of this greater transparency, of course, will be a more rigorous enforcement of the rules so that action is only taken where appropriate and justified.

How will this affect those Canadian producers who have argued that the fair market value system has provided a first line of defence against dumping, and in particular, against sporadic dumping. To answer this question it is necessary to analyse what can happen under the fair market value system. As noted above, the Deputy Minister of National Revenue for Customs and Excise may re-appraise the value for duty of any goods in any case where he deems it advisable, within two years of the date of entry of those goods. While the Deputy Minister may undertake such re-appraisals on his own initiative the more common procedure has been that they are initiated following a complaint from a domestic producer. The producer learns about low prices of imported goods through competition in the market place. The producer may actually lose sales or face demands from his clients that he reduce the price of his goods. A complaint to National Revenue by the producer results in an investigation which shows, for example, that the goods were undervalued in terms of the fair market value system by 20 percent. If the applicable rate of duty were 10 p.c. the Canadian importer would have to pay an additional 2 percent duty and the foreign exporter would be advised that in future his value for duty (fair market value) will be his former selling price advanced by 20 percent.

On the face of it this process has very little effect. It is highly unlikely that the Canadian producer will re-gain the lost sales. Given normal mark-ups and profit margins the extra 2 percent duty is little more than a nuisance to the Canadian importer and is insignificant in terms of government revenues. The action has no immediate effect on the foreign exporter. It may, however, have a deterrent effect for the future which may be of some benefit to the Canadian

producer. The fact of the investigation may reduce the price competitive attitude of the foreign exporter. The Canadian importer/purchaser may hesitate to re-order because of uncertainty about the final landed, duty paid cost of the goods. Such a situation can obviously provide protection to the Canadian producer.

This situation may have arisen either due to ignorance about the Canadian valuation system or as a result of deliberate dumping, whether or not the dumping was sporadic. Consideration should be given to whether this situation is really a viable first line of defence against dumping for Canadian producers. Assume that the exporter is deliberately dumping in order to establish a position in the Canadian market. He has been told that his fair market value, following the above example, is \$120.00 and his selling price has been \$100.00. Before the ruling the landed, duty paid price of the goods was \$110.00 and after the ruling, assuming he maintains the original selling price, it will rise to \$112.00. Is this small increase likely to be of any real value to the Canadian producer? This \$2.00 increase in the landed, duty paid cost of the goods is unlikely to provide meaningful protection to the Canadian producer. It is also possible that the exporter will increase the selling price to the ruled fair market value following the investigation. This may occur either because the exporter can use the ruling to justify the higher price or because the exporter/importer wish to avoid the possibility of an anti-dumping investigation. In either of these cases the landed, duty paid price of the goods will rise to \$132.00. This result is more likely to provide material benefits to the Canadian producer.

If this analysis of the fair market value system reasonably reflects its effect on import prices, then it is true that it can provide a deterrent against under-valuation, dumping and other "unfair" pricing practices in specific instances. The GATT neither condones these unfair pricing practices nor prohibits countries from acting against them. What the law of the GATT does require is transparency through the application of the appropriate countermeasures. If dumping is the problem then the solution must be found under the Anti-dumping Code, not the Valuation Code.

The Board addressed this issue in its Report on Part I by recommending that prior to the implementation of the proposed valuation system, the government furnish the Department of National Revenue with a clear direction authorizing the Deputy Minister to initiate anti-dumping actions against injurious, unfair and predatory pricing practices on the basis of information available to him.⁽⁷⁾ The Board made this recommendation in anticipation that there would be a need for changes in the administration of the Canadian import regime when the transaction value system is introduced. The Minister asked whether these problems might better be dealt with under other instruments of import policy. The staff's preliminary analysis suggests that these problems can be better dealt with under other instruments of import policy. Indeed, with implementation of the transaction value system, they can only be dealt with under other instruments of import policy. Furthermore, it should be noted that the Minister asked only "whether" and not "how" these problems might be dealt with under other instruments of import policy.

(1) A report by the Tariff Board. The GATT Agreement on Customs Valuation, Part I, Proposed Amendments to the Customs Act, March 27, 1981. Recommendation No. 47. pp. 63-65; 81.

The "how" question must be decided by those departments and officials who are responsible for the administration of import policy. The evidence presented during this reference has highlighted a need for change and this need has been recognized the Board in its Report on Part I.

At the same time the Board has recognized that the impetus for administrative change must come from the government. Existing administrative procedures have been developed over time and in light of the legislation of the day. As a result, present administrative practice reflects the law and also carries the weight of government sanctioned convention. At the present time Canadian import policy is undergoing substantial changes in many areas with the proposed legislation on customs valuation and the Special Import Measures Act. The Board's Recommendation No. 47 in Part I was not intended to suggest that further changes were required in law. It did recognize, however, that following the enactment of new legislation by Parliament the government should instruct officials how such legislation should be administered, particularly where this may differ from past practice. Further, the Board considered it important that such a statement of administrative intent should be made public so that the business community will know what is possible under the new legislation. This recommendation has been supported by various parties during the course of Part II of this Reference.

Appendix "A"

The following correspondence is reproduced with the permission of the Canadian Manufacturers' Associations and the Canadian Textiles Institute.

April 27, 1982

The Honourable Pierre Bussières
Minister of State (Finance)
House of Commons - Room 416WB
Ottawa, Canada
K1A 0A6

Dear Minister:

I am writing to you at this time because The Canadian Manufacturers' Association is deeply concerned about the apparent trend of Part II of Tariff Board Reference No. 159 concerning Canadian implementation of the GATT Agreement on Customs Valuation and Canada's right to preserve existing levels of tariff protection.

Essentially, CMA's concern is that the Board's terms of reference, and/or the manner in which they are being interpreted by the Board, are so narrow as to greatly limit the scope of the inquiry and, presumably, of the evidence to which it will attach any weight in developing its recommendations.

We are somewhat tardy in raising the point but it was not until the Tariff Board's Background Paper on "Possible tariff adjustments" was issued in the last week of February 1982, that it became evident that the Board was taking a rather narrow interpretation of its mandate. Careful study of that complex paper and analysis of its content and implications by CMA Committees, have inevitably taken a considerable time and it is only now that I am in a position to notify you of CMA's concern.

CMA's understanding of the Government's July 1979 announcement of the Canadian reservation concerning acceptance of the GATT Customs Valuation Code, as well as our interpretation of your August 29, 1980, letter of reference to the Tariff Board, was that a far broader examination would be undertaken of issues related to the impact on the Canadian economy of adoption of the new Customs Valuation system.

The Canadian reservation concerning acceptance of the Customs Valuation Code refers to:

"-----agreement-----on such adjustments in Canadian tariff rates as may be needed to maintain tariff protection at the levels that would prevail were Canada not to implement the Valuation Agreement" (Empasis added)

Your letter of reference to the Board established the following terms for the second phase of the Board's study:

"In conducting this study the Board should only examine the valuation system as it existed and was being applied at the beginning of April 1979, when Canada announced it would adopt the Agreement on Customs Valuation if certain conditions were met." (Empasis added)

One of our major concerns is the apparent interpretation, incorporated into the Board's Background Paper, of the words underlined in the preceding paragraph:

"The information provided in this background paper has been selected in the light of the Minister's instruction that the Board should only examine the valuation system "as it existed and was being applied at the beginning of April 1979". Therefore, the tariff items studied in this paper have been selected because goods entering under them were subject to some action at the beginning of April 1979 which may have increased their value for duty under the Customs Act. Additional goods whose value for duty has been affected by the Customs Act since April 1979 have not been included. Neither has any attempt been made to study or identify goods which, although unaffected in April 1979, might have had their value for duty increased if they had been investigated at that time. In the Board's opinion such retroactive re-appraisals are not permitted by the terms of the Minister's letter of reference."

(Background Paper, p. xiv)

We feel that this interpretation by the Board limits the scope of the inquiry by ignoring:

Imports that were subject to valuation rulings issued since April 1979, even though such rulings were issued in accordance with "---- the valuation system as it existed and was being applied at the beginning of April 1979".

A further point of concern is the paragraph in your letter of reference to the Board which states in part

"-----what, if any, tariff adjustments would be required to maintain the same level of tariff protection or to ensure that duties collected would not decline significantly if the new valuation system were adopted." (Empasis added)

The phrase about "duties collected" was not included in the Canadian reservation but appears to have been interpreted by the Board as meaning that "levels of Tariff protection" are the same thing as "duties collected". Since an effective level of tariff protection would obviously result in little duty being collected on the affected product, levels of tariff protection vary in inverse proportion to "duties collected".

This approach has resulted in the Background Paper abounding in examples where the loss of valuation rulings against imports of a specified product from a named source is indicated as being of no significance since an increase of a few hundredths of a percentage point in the rate of duty applicable to all imports, from all sources, of all goods entering under the same tariff item would result in no significant decline in the duties collected.

This approach is manifestly wrong, as the question of how much duty is collected is not really relevant.

It would seem reasonable to assume that the phrase in the letter of reference concerning "duties collected" was really intended to refer only to the duties collected on the goods directly affected by a valuation ruling under the present system. Even so, we do not consider it to be a true reflection of the effectiveness of a valuation ruling.

For example, included in the introduction to the Background Paper is the statement "-----it was decided to eliminate products where the possibly affected imports accounted for less than 40 per cent of the total 1978 imports of that commodity class". We consider this to be equivalent to saying "we will ignore all cases where the valuation ruling has been effective in reducing the volume of the imports affected by it to something less than a massive influx". In other words, the true worth of a valuation ruling is reflected not in "the duties collected" but in the extent to which it discourages entry of the affected goods.

To summarize, the basic inference to be drawn from the Background Paper is that, with a limited number of exceptions, the basic GATT rule, prohibiting discriminatory treatment between imports of the same product from different sources means that Canadian tariff rates cannot be adjusted in such a way as to maintain Canada's levels of tariff protection.

Based on their analysis, this conclusion would appear to be correct. We do not, however, agree with the Board's apparent view that their terms of reference restrict them to consideration of just two possible solutions: namely, to increase rates of duty where GATT rules permit it or to create new tariff items where it is practicable to do so.

Neither of these courses of action will do much, if anything, to preserve the levels of tariff protection against the problem imports. If no other action is taken, it is the opinion of The Canadian Manufacturers' Association that adoption of the GATT Valuation Code by Canada will result in an overall reduction of from 5 to 10 per cent in the level of tariff protection against all imports and of as much as 50 per cent against specific imports presently subject to valuation rulings. These reductions, it must be realised, will be strictly unilateral and there will be no reciprocal concessions from our trading partners.

These results are certainly not in line with Canada's undertaking and would be very detrimental to many manufacturers. If methods cannot be found to implement the changeover while maintaining the critical reservation that Canada insisted upon, then we should be willing to reconsider our commitment to implement the Valuation Agreement.

In order to achieve the objective of not eroding Canada's levels of tariff protection simply as a result of the change of the new valuation method, CMA requests that the Minister expand the Tariff Board's terms of reference so that the Board is authorized to hear, consider and report upon other alternative courses of action besides possible adjustments in rates of duty.

Yours very truly,

Roy A. Phillips,
President,
The Canadian Manufacturers' Association

July 23, 1982

Mr. Roy A. Phillips
President
Canadian Manufacturers' Association
One Yonge Street
Toronto, Ontario
M5E 1J9

Dear Mr. Phillips:

I refer to your letter of April 27 in which you expressed the concerns of your association regarding Part II of Tariff Board Reference 159 relating to Canada's implementation of the GATT Customs Valuation Agreement. I note that your concerns relate to the Tariff Board's terms of reference or, at least, the Board's interpretation of its mandate and that you believe the terms of reference should be expanded to authorize the Board to report on other courses of action besides possible adjustments in rates of duty.

Before commenting on the Board's terms of reference, I think it is important to keep in mind that the background paper referred to in your letter was issued for public information and with a view to assist interested parties in preparing their submissions to the Board. In this regard, I note that the Board has invited interested parties to submit views on general criteria which could be applied to all goods when deciding tariff rate adjustments and evidence concerning the appropriateness of the adjustment figures indicated in the paper and whether

they reflect commercial reality. I also note that the Board is prepared to examine submissions in relation to goods other than those reviewed in the background paper. I am therefore pleased to hear that your association has made a submission to the Board which sets out your concerns.

On the issue of the Board's mandate, I would wish to indicate that when the condition attached to Canada's acceptance of the Agreement was negotiated, it was recognized that in approximately 90 per cent of all importations the actual selling price was accepted as value for duty; it was not expected that for most of those importations adoption of the new system would have any significant impact on the valuation base. The problem was therefore mainly with the remaining 10 per cent which were subject to rulings or ministerial prescriptions and for which the new system could result in lower values for duty and consequently in a loss of protection. Canada's reservation was aimed at dealing with that very specific problem, i.e. the impact of adoption of the new system on the valuation base. Part II of reference 159 is strictly aimed at determining that impact. It is not within the Board's terms of reference to provide advice as to the government's options in the event that we cannot reach agreement with our trading partners on such rate adjustments as we deem necessary or what the international implications would be of a failure on our part to implement the agreement.

It is my belief that our trading partners would accuse us of proceeding in bad faith if we were to advise them that we have concluded, as you appear to have done, that Canadian tariff rates cannot be adjusted in such a way as to maintain our levels of tariff protection and, therefore, that we have no obligation to implement the valuation agreement. When we negotiated our reservation, we recognized that it would not be possible for each and every import transaction, to recapture, with rate adjustments, the precise level of tariff protection that is provided by the present system. However, it was, and is, our hope that the new system, with appropriate rate adjustments, combined with the proposed changes in other import legislation that are currently under discussion in the Standing Committee on Finance, Trade and Economic Affairs, would provide Canadian manufacturers with an adequate level of protection against imports.

As to my instruction that the Board should only examine the valuation system as it existed and was being applied at the beginning of April, 1979, let me first say that I agree with the Board's statement that this precludes them from making judgements as to what increases in values for duty might have been possible prior to that time if additional investigations had been undertaken. As to whether the Board is authorized to look at valuation rulings issued after April 1979, I would point out that the letter of reference leaves it to the Board to decide what evidence is relevant to its examination of the system as it was being applied at that time. You will appreciate, I am sure, that our trading partners were very concerned that in the absence of a "base date" for our rate adjustment exercise, Canadian manufacturers might, in anticipation of rate adjustments, seek numerous valuation reviews that would not otherwise have been initiated. The wording of the terms of reference on this point was very carefully chosen so as not to detract from the credibility of the review in the eyes of our trading partners while at the same time leaving the Board some scope to decide what evidence to consider.

With reference to your concerns that the Board may interpret "levels of tariff protection" as having the same meaning as "duties collected" I would encourage you to discuss this matter in some detail with the Board. It is traditional practice to measure the value of tariff adjustments made under Article XXVIII of the GATT in terms of "duties collected". However, mention was also made in the letter of reference to "levels of tariff protection" in recognition of the fact that our objectives in the exercise go beyond the mere maintenance of aggregate duty collections. As to your suggestion that the Board believes itself to be restricted to just two possible solutions - rate increases and the creation of new tariff items where practicable - I have no evidence that the Board intends to ignore my instruction that for certain "problem imports" covered by Ministerial prescriptions it consider whether tariff rate adjustments would be the most appropriate or feasible means of providing the protection accorded by the present valuation system. You will recall that for these goods I specifically asked the Board to consider whether some of the problems which the current valuation system seeks to address might better be dealt with under other import laws.

I note from your letter that your association is of the opinion that adoption of the new GATT Agreement will result in an overall reduction of from 5 to 10 per cent in the level of tariff protection against all imports and of as much as 50 per cent against specific imports presently subject to valuation rulings. I am sure the Tariff Board would be interested, as I would, in knowing how you have arrived at those figures. It goes without saying that the substantiation of such figures would be most valuable in the context of the Board's study of possible tariff adjustments.

Before concluding, I should clearly state that I do not believe there are grounds for reconsidering our commitment to implement the valuation agreement by January 1, 1985. Our main trading partners would not accept such a decision and would more than likely take retaliatory measures on the grounds that Canada, by its decision, was affecting the balance of concessions resulting from the MTN; they could, for example, withdraw tariff or other concessions granted to Canada in the MTN. Such a development would certainly not be to the benefit of Canadian manufacturers. It is also worth remembering that the countries now applying the new valuation agreement are already extending its benefits to Canadian exports and many of them feel that this represents a substantial concession to Canada.

On the basis of the above comments, I do not think there is a need to expand the Tariff Board's terms of reference and would invite members of your association to present their views to the Board together with any evidence they may have concerning the need for tariff rate adjustments.

I am sending a copy of this letter to the Chairman of the Tariff Board.

Yours sincerely,

Hon. Pierre Bussières,
Minister of State (Finance)

October 27, 1982

The Honourable Paul J. Cosgrove
Minister of State (Finance)
House of Commons
Ottawa, Canada
K1A 0A6

Dear Minister:

With reference to the Hon. Pierre Bussières' letter of July 23, 1982, I would advise you that the Association still considers the concerns expressed in my letter of April 27, 1982 to be valid and, now, even more serious. Neither the Tariff Board hearings (Reference 159), nor the above-mentioned letter, has given us any encouragement to believe that the intent of the "Canadian Reservation" is likely to be achieved when the Transaction Value System is implemented on January 1, 1985.

In its June 1982 appearance before the Tariff Board, the CMA delegation expressed itself in favour of implementation of the Transaction Value System, but in a slightly modified form. The Association, and most of the other delegations at the public hearing, established quite clearly that for most products current levels of tariff protection cannot be maintained through simple tariff rate adjustments. Consequently, we believe that Canada's conditional commitment is invalidated and that consideration can therefore be given to alternative methods of achieving the aim expressed in the Canadian Reservation. Several worthwhile suggestions were made to the Board on this point and we hope that they are given appropriate weight in the Board's final report.

With respect to the reference in the June 23, 1982 letter to "proposed changes in other import legislation", we would point out that there is no provision in the report of the Standing Committee on Finance, Trade and Economic Affairs for maintenance of the protection provided by our present Customs Valuation system against injurious imports of Capital Equipment, or against sporadic dumping.

The Association awaits with interest the Tariff Board's staff analysis of the evidence. Should the Board's recommendations call for no more than the ineffectual multilateral uplift of tariff rates so as to maintain the level of "duties collected", the CMA will have to continue to express firm opposition to unqualified implementation of the GATT Valuation Code.

Yours truly,

Roy A. Philipps
President
The Canadian Manufacturers' Association

May 28, 1982

The Honourable Pierre Bussières
Minister of State (Finance)
House of Commons - Room 416WB
Ottawa, Canada
K1A 0A6

Dear Mr. Bussières:

The Canadian Textiles Institute has submitted the enclosed brief to the Tariff Board with respect to Phase II of Tariff Reference 159: The GATT Agreement on Customs Valuation. CTI also expects to appear at the public hearings on this Reference which are scheduled to begin on June 14th.

Our fundamental recommendation is that the proposed legislation should not be used for valuing textile imports into Canada and that the existing fair market value system be retained for this purpose until the next round of Multilateral Trade Negotiations. We request that the treatment of freight in the existing system continue unchanged.

The Canadian reservation submitted by our negotiators during the Tokyo Round and accepted by our trading partners is clearly conditional:

"Canada will implement the Valuation Agreement no later than January 1, 1985, provided that before that date there has been agreement under Article XXVIII of the GATT on such adjustments in Canadian tariff rates as may be needed to maintain tariff protection at the levels that would prevail were Canada not to implement the Valuation Agreement."

We do not believe this condition can be met.

The onus has been placed on industry to demonstrate that the proposed change in valuation systems will result in a loss of protection, and to recommend what compensatory tariff uplifts would be appropriate. Lacking access to the files of Revenue Canada, we have no realistic means of doing this.

Measuring the loss of protection, and, indeed, determining what constitutes loss of protection, is a difficult task. The Tariff Board's background paper narrowly addresses only one of the several elements of this prospective loss. It has not measured the full loss that can be expected.

Moreover, it is not correct to simply assume that a measure of the loss of revenue to the Crown is a measure of the loss of protection to Canadian industry.

There are several factors to be considered in determining loss of protection, many of which are not readily quantifiable. It has been suggested that some of the inherent problems may be dealt with under other instruments of import policy; we do not believe this is possible, given the restrictions of, for example, the anti-dumping system which respects Article VI and the Anti-dumping Code.

Even if the full loss were measured and translated to tariff rate adjustments, there remains the problem of implementing these rates on an MFN basis in the face of opposition from our trading partners.

The only effective way of dealing with this problem is to negotiate within a broader context, namely, the next round of Multilateral Trade Negotiations. This will permit time for a proper study of the effects of a change and, following the example of the United States in the Tokyo Round, to build the necessary adjustments into the new schedule of tariff rates at that time.

Sincerely,

Eric Barry,
President,
Canadian Textiles Institute

August 6, 1982

Mr. Eric Barry
President
Canadian Textiles Institute
1080 Beaver Hall Hill
Suite 1002
Montreal, Quebec
H2Z 1T6

Dear Mr. Barry:

I refer to your letter of May 28 in which you provided me with a copy of your submission to the Tariff Board on Part II of Tariff Board Reference 159 (Customs Valuation). I am pleased to see that you have made your views known to the Board on that important part of its study. In your letter you raise a number of issues upon which I would want to comment.

I would first wish to recall that Canada's agreement to adopt the GATT Customs Valuation Agreement was made in the broad context of the Tokyo Round of Multilateral Trade Negotiations (MTN) and was part of Canada's overall contribution to the MTN which other countries accepted in exchange for improvements in the terms of access for Canadian exports to their markets. The reservation attached to Canada's acceptance was designed to establish our right to make certain tariff rate adjustments as a consequence of the change in the valuation base and to postpone the effective date of implementation from January 1, 1981 to January 1, 1985. This postponement was obtained to give the Tariff Board sufficient time for a proper study of the impact of the new system on the level of tariff protection and to allow Canadian manufacturers as well as importers and the government itself more time to adjust to the change.

This postponement of the effective date is regarded by our trading partners as a very substantial concession to Canada. The countries now applying the new valuation agreement are already extending its benefits to Canadian exports while their exports to us continue to be valued on the basis of fair market values in the country of export.

Your recommendation that the proposed valuation legislation not be used to value textile imports into Canada and that the fair market value system be retained for them would, in my view, be inconsistent with the agreement which the Government has entered into. The GATT agreement is of general application and does not provide for the type of product exceptions you propose. I would further note that the use of the fair market value concept is specifically prohibited under the GATT agreement. Our trading partners would undoubtedly oppose any attempt by Canada to continue to apply that concept for any particular group of products. Moreover the exclusion of textiles would be difficult to defend domestically on the basis of equity, especially since textile tariff rates were not, on the whole, reduced as much as other tariffs in the MTN and given the special measures of protection that are already in place to assist the textile industry.

With reference to your concern that the Board adopted an unduly narrow approach to the measurement of the loss of tariff protection in its background paper of January 1982, I would encourage you to continue to discuss the matter with the Board. It is traditional practice to measure the value of tariff adjustments made under GATT Article XXVIII in terms of "duties collected". However, mention was also made in my letter of August 1980 to the Board to "levels of tariff protection" in recognition of the fact that our objectives in the exercise go beyond the mere maintenance of aggregate duty collections. I would however point out that Part II of reference 159 is essentially a technical exercise aimed at determining the impact on the valuation base of adoption by Canada of the GATT Agreement. In this connection, I wish to point out that it is estimated that for about 90 percent of all imports the change should not have any significant impact on the valuation base as the selling price for those imports is accepted as the value for duty. In connection with the latter point, I have no reason to believe that the estimates of National Revenue referred to in the Board's background paper are incorrect.

It is my belief that our trading partners would accuse us of proceeding in bad faith if we were to advise them that we had concluded that we have no obligation to implement the valuation agreement by January 1, 1985 because Canadian tariff rates cannot be adjusted in such a way as to maintain our levels of tariff protection. When we negotiated our reservation, we recognized that it would not be possible for each and every import transaction, to recapture, with rate adjustments, the precise level of tariff protection that is provided by the present system. However, it was, and is, our hope that the new system, with appropriate rate adjustments, combined with the proposed changes in other import legislation would provide Canadian manufacturers with an adequate level of protection against imports. (As you are probably aware a Sub-Committee of the Standing Committee on Finance, Trade and Economic Affairs has examined the changes proposed in other import legislation and issued its report on July 9; the government is currently examining that report).

Concerning the treatment of freight charges, I wish to refer to my response to the Board's report on Part I of reference 159 which was sent on December 21, 1981, indicating the government's intention to adopt under the new system treatment similar to that under the current system, i.e., the freight costs incurred in the country of export after the point of direct shipment to Canada would not be included in the value for duty.

I note from your submission to the Board that one aspect of the GATT agreement that is of particular concern to your industry is the loss of ministerial prescriptions and their deterrent effects. As you know in my letter of reference to the Board I asked the Board to consider whether tariff rate adjustments would be the most appropriate or feasible means of providing the protection now accorded by these prescriptions. I also asked the Board to consider whether some of the problems which the current system seeks to address might better be dealt with under other import laws. I have noted your views on that latter point, but would prefer to await the Board's views before drawing any conclusions.

Before concluding, I should clearly state that I do not believe there are any grounds for reconsidering, in whole or in part, our commitment to implement the valuation agreement by January 1, 1985. Our main trading partners would not accept such a decision and would more than likely take retaliatory measures against our exports on the grounds that Canada, by its decision, was affecting the balance of concessions resulting from the MTN. Such a development would certainly not be to the benefit of Canadian industry.

On the basis of the above comments, I am afraid I cannot agree with the course of action you propose in your letter. I would, however, invite members of your association to present their views to the Board together with any evidence they may have concerning the need for tariff rate adjustments.

Yours sincerely,

Hon. Pierre Bussières,
Minister of State (Finance)

November 3, 1982

Hon. Paul Cosgrove
Minister of State (Finance)
House of Commons
Room 358
Confederation Building
Ottawa, Ontario

Dear Mr. Cosgrove:

We have read with interest the Hon. Pierre Bussières' response to our letter of May 28 regarding the textile industry's position with respect to Canada's adoption of a new Customs Valuation Code, and have discussed it at length with industry members.

We have been following the proceedings of Tariff Reference 159 since its initiation in August 1980 and have made representations outlining the industry's concerns to the Tariff Board on Phases I and II. We were encouraged by the Tariff Board's recommendations on Phase I. We were particularly hopeful that the Minister's suggestion to the Board of considering "whether some of the problems which the current valuation system seeks to address might better be dealt with under other instruments of import policy, including these discussed in the recently published discussion paper on Import Policy" would yield a comprehensive investigation of the problems faced by our industry and others vis-à-vis import and valuation legislation. In a spirit of cooperation, we also, therefore, made extensive representation to Mr. Mackasey's Subcommittee on Import Policy.

While we did not have definitive answers to the many problems we raised in both arenas, we felt it necessary to present both to the Subcommittee and the Tariff Board the unique considerations of the textile industry in light of the sweeping changes imminent in Canada's import legislation. We were extremely discouraged by Mr. Bussièrès' response to the Tariff Board's recommendations, and were certainly dismayed to find that Mr. Mackasey's report did not address our concerns either.

Most disappointing, however, is Mr. Bussièrès' letter of August 6 to Eric Barry which leads us to believe that the textile industry's concerns will not be adequately addressed, and which, we fear, indicates the government's determination to forge ahead with the new Valuation Code without clearly assessing the impact it will have on domestic manufacturers.

We continue to hope that this is not the case, and that our concerns and the special problems of our industry which we have identified will be taken into account. To this end, we request a meeting with your officials to discuss with them how these problems can best be dealt with.

Sincerely,

Peter R. Duffield
Chairman
Trade Policy Committee



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